



Fair Work  
Commission

# Discussion Paper

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## Job Security

Modern Awards Review 2023–24

18 December 2023  
Fair Work Commission



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***This paper has been prepared by staff of the Fair Work Commission to promote discussions in relation to whether terms of modern awards appropriately reflect amendments to the Fair Work Act 2009 concerning job security and the need to improve access to secure work across the economy. It does not represent the concluded view of the Commission on any issue.***



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## Glossary

ABS	Australian Bureau of Statistics
ACCI	Australian Chamber of Commerce and Industry
Ai Group	Australian Industry Group
ACTU	Australian Council of Trade Unions
AIRC	Australian Industrial Relations Commission
Awards Review	Modern Awards Review 2023-24
AWR	Annual Wage Review
CALD	Culturally and linguistically diverse
Closing Loopholes Bill	Fair Work Legislation Amendment (Closing Loopholes) Bill 2023
Commission or FWC	Fair Work Commission
EEH	ABS Survey of Employee Earnings and Hours
Employment White Paper	Working Future: The Australian Government's White Paper on Jobs and Opportunities
FW Act	<i>Fair Work Act 2009</i>
HILDA Survey	Melbourne Institute's Household, Income and Labour Dynamics in Australia Survey
ILO	International Labour Organisation
Job Insecurity Report	The job insecurity report of the Senate Select Committee on Job Security
<i>Metals Casuals Decision</i>	<i>Re Metal, Engineering and Associated Industries Award, 1998 - Part 1 [2000] AIRC 722</i>



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NES	National Employment Standards
<i>Penalty Rates Review</i>	<i>Shop, Distributive and Allied Employees Association v The Australian Industry Group [2017] FCAFC 161</i>
RBA	Reserve Bank of Australia
REM	Revised Explanatory Memorandum to the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022
SJBP Act	<i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i>
Statistical Report	Statistical report—Annual Wage Review 2022–23 (Version 6)



# 1. Introduction

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

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

[2] The areas of focus suggested by the Minister included considering whether the terms of modern awards appropriately reflect the new object of the FW Act and modern awards objective regarding job security and the need to improve access to secure work across the economy, including by:

- considering award provisions concerned with rostering, guaranteed shifts, and the interaction of permanent, part-time, and casual classifications; and
- reviewing standard award clauses with general application across the award safety net, to assess their continuing suitability in light of the updated modern awards objective.<sup>2</sup>

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

[4] The Awards Review will include consideration of certain ‘priority’ matters as identified in the Minister’s letter,<sup>3</sup> including that set out at paragraph [2] concerning job security. This discussion paper begins the job security stream of the Awards Review.

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

<sup>2</sup> [President’s Statement](#), Fair Work Commission, 15 September 2023, at [3].

<sup>3</sup> *Ibid* at [7].



- [5] The paper is intended to form the basis of a discussion with interested stakeholders about how the modern awards safety net might better support the objectives in the FW Act in relation to promoting job security and improving access to secure work, in line with the stated aims of the Awards Review.
- [6] The paper begins by discussing the context of the Awards Review (Chapter 2) concerning job security, including discussion of the relevant SJBPA Act amendments and other recent developments. Chapter 3 presents an overview of the issue of job security, its definition, and types of employment that might indicate a lack of job security. Chapter 4 provides an analysis of award provisions relevant to job security found in the seven most-commonly used modern awards and also examines the standard clauses found in all modern awards.
- [7] Chapter 5 contains a list of questions for the purposes of framing and focusing submissions in response to this discussion paper and facilitating discussion at the conferences. Interested parties are invited to consider and respond to these questions and provide any other relevant responses addressing the issue of job security by **5 February 2023**, in accordance with the timetable for the Awards Review.<sup>4</sup> Responses are to be sent to [awards@fwc.gov.au](mailto:awards@fwc.gov.au) and will be published on the Commission's website. A [submission template](#) has been published on the Commission's website to assist parties with preparing their responses.
- [8] Responses received will inform the consultation process for this part of the Awards Review, to be conducted between **12 February – 8 March 2024**, and the Commission's final report in the Awards Review, scheduled to be published in or around June 2024.

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<sup>4</sup> *Modern Awards Review 2023-24 – timetable finalised* [\[2023\] FWCFB 179](#), 4 October 2023.



## 2. The context of the Awards Review

This chapter provides a brief overview of recent legislative amendments to the objects provisions in the FW Act that give rise to the focus area of job security in the Awards Review. Before discussing the concept of job security more generally, this chapter sets out these amendments to the legislative framework, and discusses the principles concerning the application of the modern awards objective. This chapter also briefly looks at other recent developments concerning the issue of job security, including recent inquiries and further proposed legislative amendments.

### 2.1 The updated objects of the FW Act

[9] The SJBPA Act, which received Royal Assent on 6 December 2022, included several measures which were said to be aimed at improving job security. In the second reading speech for the SJBPA Act, the Minister for Employment and Workplace Relations, the Hon. Tony Burke said the following regarding job security:

“Years ago, job security was simply defined across the economy as the difference between being a casual or a permanent employee. Job insecurity now has many faces. We see it in the gig economy, labour hire, new forms of insecurity for part-time employees, and rolling fixed-term contracts which effectively amount to a permanent probation period for employees. We see it where casual loading has not been a sufficient incentive to promote secure jobs.”<sup>5</sup>

[10] To address job insecurity, the SJBPA Act amended the object of the FW Act and modern awards objective to include considerations of job security and secure work. These amendments took effect on 7 December 2022. They were accompanied by other measures in the SJBPA Act designed to address job security including:

- limiting the use of certain fixed-term contracts;
- strengthening the right to request flexible working arrangements to assist eligible employees to negotiate workplace flexibilities that suit them and their employer; and

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<sup>5</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 27 October 2022, p. 2176, (Hon. Tony Burke).





- making it easier to collectively bargain for enterprise agreements.

[11] When performing its functions or exercising its powers under a part of the FW Act, the Commission must consider the objects of the FW Act and any objects of the relevant part.<sup>6</sup> The Commission’s powers to make, vary or revoke modern awards are in Part 2-3 of the FW Act. The objects of Part 2-3 are expressed in the modern awards objective in section 134, which applies to the performance or exercise of the Commission’s modern award powers. The object of the FW Act set out in section 3 was amended to include the promotion of job security as follows:

**“3 Object of this Act**

The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by:

- (a) providing workplace relations laws that are fair to working Australians, promote job security and gender equality, are flexible for businesses, promote productivity and economic growth for Australia’s future economic prosperity and take into account Australia’s international labour obligations; and

...”

(emphasis added)

[12] The modern awards objective was amended to include a new paragraph concerning job security in section 134(1) as follows:

**“134 The modern awards objective**

*What is the modern awards objective?*

- The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

...

- (aa)** the need to improve access to secure work across the economy;  
and

...”

(emphasis added)

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<sup>6</sup> Fair Work Act 2009 (Cth) s 578(a).



- [13] As a result, the Commission is required to take into account the need to improve access to secure work and the goal of promoting job security when exercising its modern award powers.
- [14] The remainder of this paper will refer to both the object of the FW Act and the modern awards objective as amended by the SJBPA Act as the ‘updated objects’. The job security aspect of the Awards Review calls for consideration of whether the terms of modern awards appropriately reflect the updated objects.
- [15] The updated objects were made by *Part 4—Objects of the Fair Work Act* of Schedule 1 of the SJBPA Act. Part 4 of the SJBPA Act is discussed in paragraphs 330-343 of the revised explanatory memorandum (REM) to the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022.
- [16] In paragraph 330, the REM states that the inclusion of job security in the object of the FW Act places the consideration at the heart of the Commission’s decision-making and supports the Government’s priority to deliver secure, well-paid jobs. The REM notes that, in addition to the section 578(a) requirement for the Commission to take into account the objects of the FW Act when performing functions or exercising powers under the FW Act, it is a principle of statutory interpretation that the FW Act is interpreted in a way that best achieves its object wherever possible.
- [17] At paragraph 334, the REM further states that the reference to promoting job security in the object of the FW Act:
- “recognises the importance of employees and job seekers having the choice to be able to enjoy, to the fullest extent possible, ongoing, stable and secure employment that provides regular and predictable access to beneficial wages and conditions of employment.”<sup>7</sup>
- [18] As to ‘the need to improve access to secure work’ into the modern awards objective in section 134(1), the REM notes that this will require the Commission to take this consideration into account when setting terms and conditions in modern awards.<sup>8</sup>

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<sup>7</sup> Revised Explanatory Memorandum, Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 (Cth) at [334].

<sup>8</sup> Ibid at [332].



### 2.1.1 Modern awards objective

[19] The modern awards objective requires the Commission to ensure that modern awards, together with the National Employment Standards ([NES](#)), provide a fair and relevant minimum safety net of terms and conditions, taking into account the social and economic factors set out in sections 134(1)(a)–(h) (the section 134 considerations). As noted above, the Commission must consider the modern awards objective when exercising its modern award powers, which include the Commission’s functions or powers under Part 2-3 of the FW Act and those under Part 2-6 so far as they relate to modern award minimum wages. Further, to vary, make or revoke a modern award under section 157(1) of the FW Act, the Commission must be satisfied that it is necessary to achieve the modern awards objective. Principles concerning the construction and application of the modern awards objective are summarised below.

[20] The modern awards objective is broadly expressed.<sup>9</sup> It is a composite expression which requires that modern awards, together with the NES, provide ‘a fair and relevant minimum safety net of terms and conditions’, taking into account the section 134 considerations.<sup>10</sup> As the Full Court observed in *Shop, Distributive and Allied Employees Association v The Australian Industry Group* (the *Penalty Rates Review*):

“Those qualities are broadly conceived and will often involve competing value judgments about broad questions of social and economic policy. As such, the FWC is to perform the required evaluative function taking into account the s 134(1)(a)–(h) matters and assessing the qualities of the safety net by reference to the statutory criteria of fairness and relevance. It is entitled to conceptualise those criteria by reference to the potential universe of relevant facts, relevance being determined by implication from the subject matter, scope and purpose of the Fair Work Act ... As discussed “fair and relevant”, which are best approached as a composite phrase, are broad concepts to be evaluated by the FWC taking into account the s 134(1)(a)–(h) matters and such other facts, matters and circumstances as are within the subject matter, scope and purpose of the Fair Work Act. Contemporary circumstances are

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<sup>9</sup> See *Shop, Distributive and Allied Employees Association v National Retail Association (No 2)* (2012) 205 FCR 227 at [35].

<sup>10</sup> See *4 yearly review of modern awards – penalty rates* [2017] FWCFB 1001 at [128]; *Shop, Distributive and Allied Employees Association v The Australian Industry Group* (2017) 253 FCR 368 at [41]–[44].



called up for consideration in both respects, but do not exhaust the universe of potentially relevant facts, matters and circumstances.”<sup>11</sup>

[21] Fairness in the context of providing a ‘fair and relevant minimum safety net’ is to be assessed from the perspective of the employees and employers covered by the modern award in question.<sup>12</sup> As the Full Court in the *Penalty Rates Review* observed:

“it cannot be doubted that the perspectives of employers and employees and the contemporary circumstances in which an award operates are circumstances within a permissible conception of a “fair and relevant” safety net taking into account the s.134(1)(a)-(h) matters.”<sup>13</sup>

[22] The obligation to take into account the section 134 matters means that each matter is a ‘relevant consideration’ in the sense discussed in *Minister for Aboriginal Affairs and Another v Peko-Wallsend Limited and Others*.<sup>14</sup> Each matter, insofar as it is relevant, must be treated as a matter of significance in the Commission’s decision-making process.<sup>15</sup> No particular primacy is attached to any individual section 134 consideration<sup>16</sup> and not all of the considerations will necessarily be relevant in the context of a particular matter. Further, the matters which the Commission may take into account are not confined to the section 134 considerations. As the Full Court further observed in *Penalty Rates Review*:<sup>17</sup>

“What must be recognised, however, is that the duty of ensuring that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions itself involves an evaluative exercise. While the considerations in s 134(a)-(h) inform the evaluation of what might constitute a ‘fair and relevant minimum safety net of terms and conditions’, they do not necessarily exhaust the matters which the FWC might properly consider to be relevant to that standard, of a fair and relevant minimum safety net of terms and conditions, in the particular circumstances of a

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<sup>11</sup> [2017] FCAFC 161 at [49] and [65].

<sup>12</sup> *Annual Wage Review 2017-18* [\[2018\] FWCFB 3500](#) at [21]-[24].

<sup>13</sup> [2017] FCAFC 161 at [53].

<sup>14</sup> [1986] HCA 40, (1986) 162 CLR 24; See also *Griffiths v The Queen* (1989) 167 CLR 372 at [379].

<sup>15</sup> *Edwards v Giudice* (1999) 94 FCR 561 at [5]; *Australian Competition and Consumer Commission v Leelee Pty Ltd* [1999] FCA 1121 at [81]-[84]; *National Retail Association v Fair Work Commission* (2014) 225 FCR 154 at [56].

<sup>16</sup> *Shop, Distributive and Allied Employees Association v The Australian Industry Group* [2017] FCAFC 161 at [48].

<sup>17</sup> *Ibid* at [48].



review. The range of such matters ‘must be determined by implication from the subject matter, scope and purpose of the Fair Work Act’”(Citations omitted).

[23] Section 138 of the FW Act emphasises the importance of the modern awards objective:

**“138 Achieving the modern awards objective**

A modern award may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the modern awards objective and (to the extent applicable) the minimum wages objective.”

[24] Terms included in modern awards must be ‘necessary to achieve the modern awards objective’. Assessing that which is ‘necessary’ to achieve the modern awards objective in a particular case involves an evaluative judgement, taking into account the section 134 considerations to the extent that they are relevant having regard to the context, including the circumstances pertaining to the particular modern award, the terms of any proposed variation and the submissions and evidence.<sup>18</sup>

### 2.1.2 Expert Panel commentary concerning job security in the context of modern awards

[25] The concept of job security and the updated objects were discussed by the Expert Panel in the *AWR 2022-23 Decision* as follows:<sup>19</sup>

“[28]...In the award context, job security is a concept which is usually regarded as relevant to award terms which promote regularity and predictability in hours of work and income and restrict the capacity of employers to terminate employment at will. The award provisions which are likely to be most pertinent in this respect are those which concern the type of employment (full-time, part-time, casual or other), rostering arrangements, minimum hours of work per day and per week, the payment of weekly or monthly rather than hourly wages, notice of termination of employment and redundancy pay (noting that a number of these matters are dealt with in the NES).

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<sup>18</sup> See *Shop, Distributive and Allied Employees Association v National Retail Association (No.2)* (2012) 205 FCR 227.

<sup>19</sup> [\[2023\] FWCFB 3500](#).



[29] Beyond the immediate award context, job security has a broader dimension and may be understood as referable to the effect of general economic circumstances upon the capacity of employers to employ, or continue to employ, workers, especially on a permanent rather than casual basis. ...”

[26] The Expert Panel also observed:

“[30]...paragraph 334 of the REM explains that the reference to promoting job security in s 3(a) recognises the importance of employees and job seekers ‘having the choice’ to be able to enjoy as much as possible ‘ongoing, stable and secure employment that provides regular and predictable access to beneficial wages and conditions of employment’. We see no reason to consider that the expression ‘secure work’ in s 134(1)(aa) bears any substantially different connotation to ‘job security’ in s 3(a). However, we consider that it is significant that s 134(1)(aa) refers to ‘the need to improve access’ to secure work rather than the general promotion of job security. The language of s 134(1)(aa) suggests that it is more tightly focused on the capacity of employees to enter into work which may be characterised as secure. This appears to reflect the REM’s reference to the importance of employees being able to have a ‘choice’ to enter into secure employment. As such, the consideration in s 134(1)(aa) would appear to direct attention primarily to those award terms which affect the capacity of employees to make that choice. ...”

## 2.2 Other recent developments

[27] The issue of job security was the subject of a Senate Select Committee inquiry in 2021-22 and increasing job security the substantial focus of the Closing Loopholes Bill, introduced in the Parliament on 4 September 2023. This section will canvas these and other recent developments relating to the issue of job security, including a summary of relevant recommendations in Annexure A—Relevant recommendations.

### 2.2.1 Senate Select Committee on Job Security

[28] In February 2022, the Senate Select Committee on Job Security published the Job Insecurity Report.<sup>20</sup> This report provides a detailed examination of the issue of job security. The Committee found that insecure work was increasing and will continue to increase without government

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<sup>20</sup> Senate Select Committee Report on Job Security, [The job insecurity report](#), February 2022.



action.<sup>21</sup> The Report made recommendations, including that job security be part of the object of the FW Act and modern awards objective.

[29] The Job Insecurity Report found that growth in the following categories of work indicated an increased prevalence in precarious and insecure work:

- part-time jobs;
- indirect employment, outsourcing and labour hire;
- on-demand and “independent” contractor jobs; and
- fixed term contract roles.<sup>22</sup>

[30] The Report further states that inquiry participants had divergent views on how best to achieve job security in practice. It notes that the ACTU believe that the SJBPA Act will address job insecurity, but more work is to be done regarding casual, labour hire, and gig workers, as well as to eliminate sham contracting arrangements, whereas the Business Council of Australia argued that the principal tools to achieve increased job security were improving economic growth and increasing productivity.<sup>23</sup>

[31] The Job Insecurity Report was preceded by 3 interim reports dealing with job security in different working environments.<sup>24</sup> Each report made recommendations, some of which may be considered relevant to the job security aspect of the Awards Review. A list of these recommendations appears in Annexure A—Relevant recommendations.

### 2.2.3 Senate Select Committee on Work and Care Final Report

[32] The Senate Select Committee on Work and Care released its final report in March 2023, acknowledging the close relationship between workplace flexibility and job security. The report found that working carers are more likely to be in insecure work, creating significant challenges to combining work and care.

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<sup>21</sup> Ibid at [11.7].

<sup>22</sup> Ibid at [2.5].

<sup>23</sup> Ibid at [2.29]-[2.30].

<sup>24</sup> See Senate Committee on Job insecurity, [First interim report: on-demand platform work in Australia](#), June 2021; [Second interim report: insecurity in publicly-funded jobs](#), October 2021; and [Third interim report: labour hire and contracting](#), November 2021.



[33] Recommendations from the Work and Care report reiterate the recommendations from the Senate Select Committee on Job Security and call on the Australian Government to:

“develop a new statutory definition of casual employment that reflects the true nature of the employment relationship and is restricted to work that is genuinely intermittent, seasonal or unpredictable; and

restrict the use of low base hour contracts, which can be 'flexed up' without incurring any pay penalty for additional hours worked beyond contract, and ensure permanent part-time employees have access to regular, predictable patterns and hours of work. This could include implementing penalty rates for any hours worked over the contracted amount. For example, if an employee is contracted for 15 hours and their employer rosters them for more, they should be paid a penalty rate for hours worked beyond the contracted amount.”<sup>25</sup>

[34] While there is overlap between workplace relations settings that impact work and care and the provisions affecting job security, the focus of this discussion paper will be on whether modern awards terms appropriately reflect the new object of the FW Act and the modern awards objective in relation to secure work. The impact of workplace relations settings on work and care will be explored in a further discussion paper to be published on 29 January 2024.

[35] A list of recommendations arising from the final report and interim report issued by the Senate Select Committee on Work and Care which may be considered relevant appears in Annexure A— Relevant recommendations.

## 2.2.4 Employment White Paper

[36] On 25 September 2023, the Australian Government released the Employment White Paper 'Working Future'. The paper sets out 5 objectives for labour market reform, including 'Promoting job security and strong, sustainable wage growth'.<sup>26</sup>

[37] The Employment White Paper acknowledges that insecure work has a differential impact on certain Australians, including women, young people and migrants. While recognising that casual arrangements align with the preferences of some workers, the White Paper observes that for a significant number of workers, this flexibility comes at the expense of guaranteed regular work

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<sup>25</sup> Select Committee on Work and Care, [Final Report](#), March 2023 at [8.151].

<sup>26</sup> Australian Government, [Working Future: The Australian Government's White Paper on Jobs and Opportunities](#), September 2023, p.47.





patterns, an entitlement to paid leave or compensation if retrenched.<sup>27</sup> 'Secure, fairly paid jobs' the White Paper states, 'are the foundation of a well-functioning labour market'.<sup>28</sup>

## 2.2.5 Fair Work Legislation Amendment (Closing Loopholes) Bill 2023

[38] On 4 September 2023, the Federal Government introduced the Closing Loopholes Bill in the Parliament.

[39] The Closing Loopholes Bill proposes amendments to the FW Act, a number of which may relate to job security. These include:

- Clarifying the ordinary meanings of 'employee' and 'employer' for the purposes of the FW Act based on the 'practical reality, real substance and true nature' of the employment relationship;
- Amending the definition of casual employee to allow for consideration of how the employment functions in practice;
- Establishing a new pathway for casual conversion for employees who no longer meet the definition of a casual;
- Empowering the Commission to set binding minimum standards for 'employee-like' workers performing digital platform work and for workers in the road transport industry;
- Preventing labour hire workers from being paid less than employees employed directly by their host employer in certain circumstances;
- Amending the available defence against charges of sham contracting.

[40] Noting the Job Insecurity Report that found casual workers are less secure, the Explanatory Memorandum to the Bill states that the intention of these amendments is to improve job security for casual workers by replacing the existing definition of 'casual employee' and by introducing a new pathway for eligible employees to change to permanent employment if they wish to do so.<sup>29</sup>

[41] On 7 September 2023, the Senate referred the Closing Loopholes Bill to the Education and Employment Legislation Committee for inquiry and report by 1 February 2024. Submissions for the inquiry were requested by 29 September 2023 and 166 submissions were received from a

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<sup>27</sup> Ibid, p.49.

<sup>28</sup> Ibid, p.68.

<sup>29</sup> Explanatory Memorandum, [Fair Work Legislation Amendment \(Closing Loopholes\) Bill 2023 \(Cth\)](#), at [10] and [52].



range of stakeholders including employer groups, employee groups, peak bodies and academics.<sup>30</sup> A program of public hearings was also held.

[42] On 9 November 2023, the Senate directed the Education and Employment Legislation Committee to hold a hearing on 22 January 2024 and not to report before its scheduled reporting date of 1 February 2024.<sup>31</sup> An overview of amendments made to the Closing Loopholes Bill in response to submissions to the inquiry are summarised by the Department of Employment and Workplace Relations in a supplementary submission made to the Inquiry.<sup>32</sup>

[43] The Closing Loopholes Bill was also considered by the Senate Standing Committee for the Scrutiny of Bills. In their Scrutiny Digest of 8 November 2023, the Standing Committee requested the Minister's advice on the necessity and appropriateness on a number of the proposed provisions.<sup>33</sup>

[44] On 7 December 2023, the Senate agreed a number of amendments to the Closing Loopholes Bill which resulted in the division of the Bill into two parts, the Closing Loopholes Bill and the Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023. The Closing Loopholes Bill subsequently passed both houses of Parliament the same day and received Royal Assent on 14 December 2023. The Bill as passed included the provisions aimed at preventing labour hire workers from being paid less than employees employed directly by their host employer in certain circumstances but did not include any of the other measures outlined above.

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<sup>30</sup> Parliament of Australia, *Enquiry home page*,

<[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/ClosingLoopholes](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/ClosingLoopholes)> accessed 27 November 2023.

<sup>31</sup> Parliament of Australia, *Procedural Information Bulletin No. 376*,

<[https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/Procedural\\_Information\\_Bulletins/2023/bull376](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Procedural_Information_Bulletins/2023/bull376)> accessed 27 November 2023.

<sup>32</sup> Department of Employment and Workplace Relations, Fair Work Legislation Amendment (Closing Loopholes) Bill 2023, [Submission 42 - Supplementary submission](#).

<sup>33</sup> Senate Standing Committee for the Scrutiny of Bills, [Scrutiny Digest 13 of 2023](#), November 2023.



## 3. The issue of job security

Before proceeding to an analysis of award provisions in chapter 4, it may be useful to provide an overview of the issue of job security and prevalence of ‘insecure work’ within an Australian context. Drawing on the wealth of commentary available, this chapter discusses what is generally understood as the nature and incidence of job insecurity, including the different types of employment said to be most affected.

### 3.1 Rise of ‘non-standard’ work

[45] Discussion of job security has increased in conjunction with the growth of so-called ‘non-standard’ employment or work. Non-standard work can be understood as any type of employment, or engagement in the labour market, other than permanent full-time employment.<sup>34</sup>

[46] In an Australian context, non-standard work increased most significantly in the 1980s and early-1990s.<sup>35</sup> The rise of non-standard employment is understood to have been driven by: economic reforms and the country’s transition to a service-based economy; and, strong growth in the participation of women and students in the labour force, fuelling demand for flexible work.<sup>36</sup> A general decline in collective agreements as the dominant form of workplace regulation have also affected the composition of employment, contributing to growth in non-standard work and

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<sup>34</sup> Inga Laß and Mark Wooden, ‘Trends in the prevalence of non-standard employment in Australia’ (2020) 62(1), *Journal of Industrial Relations*, p.3.

<sup>35</sup> Ibid; Australian Bureau of Statistics, Working arrangements (14 December 2022) <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/working-arrangements/latest-release#casual-employment>> accessed November 2023.

<sup>36</sup> Geoff Gilfillan, ‘Recent and long-term trends in the use of casual employment’ (Research Paper Series 2021–22, Parliamentary Library, Parliament of Australia, 24 November 2021), p.5; Inga Laß and Mark Wooden, ‘Trends in the prevalence of non-standard employment in Australia’ (2020) 62(1) *Journal of Industrial Relations*, pp.24-25.



greater reliance on the modern award safety net.<sup>37</sup> Employer preferences have also shifted as more flexible forms of employment are utilised to respond to peaks and troughs in demand.<sup>38</sup>

- [47] Gilfillan found that between August 1992 and 2021, permanent full-time employment fell from 70.4 per cent of total employment to 61.7 per cent. During this period, permanent part-time employment almost doubled from 8.2 per cent in 1992 to 15.8 per cent in 2021.<sup>39</sup> Australian Bureau of Statistics (ABS) data shows that, in trend terms in October 2023, 30.5 per cent of the Australian workforce was employed part-time (defined as working less than 35 hours per week in all jobs, including permanent employment and other part-time arrangements).<sup>40</sup>
- [48] More recently, technological innovation has facilitated growth in digital platforms and the on-demand or 'gig economy'.<sup>41</sup> Digital platforms have made accessing products and services faster, cheaper and easier.<sup>42</sup> Platform-based work creates new opportunities to organise work across a range of industries (for example, personal transport, delivery, care and professional services). Yet, the relatively rapid growth of digital platform employment or engagement has contributed to concerns that the security found in traditional work is being eroded.<sup>43</sup>

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<sup>37</sup> Commonwealth of Australia, *Working Future: the Australian Government's White Paper on Jobs and Opportunities* (Treasury, September 2023), pp.52-53; see also Department of Employment and Workplace Relations, *Enterprise bargaining outcomes from the Australian Jobs and Skills Summit: Regulation impact statement* (2022); Alison Pennington, 'Collective bargaining reform: What does business want? And what would actually fix the system?' (Australia Institute Centre for Future Work, Briefing Paper, October 2019).

<sup>38</sup> Geoff Gilfillan, 'Recent and long-term trends in the use of casual employment' (Research Paper Series 2021–22, Parliamentary Library, Parliament of Australia, 24 November 2021), p.5.

<sup>39</sup> *Ibid.* Gilfillan's analysis suggests that non-standard employment continues to rise, but at a much slower pace, noting that he considers employees only.

<sup>40</sup> Australian Bureau of Statistics, Labour force, Australia <<https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/oct-2023>> accessed 16 November 2023.

<sup>41</sup> See International Labour Organisation, *World economic and social outlook: The role of digital labour platforms in transforming the world of work* (International Labour Office, Geneva, 2021); Actuaries Institute, 'The rise of the Gig Economy and its impact on the Australian workforce' (Green Paper, December 2020); International Labour Organisation, 'Job quality in the platform economy' (Global Commission on the Future of Work, Issue Brief, No. 5, 2018).

<sup>42</sup> Commonwealth of Australia, *First interim report: on-demand platform work in Australia* (Senate Select Committee on Job Security, 2021), p.13.

<sup>43</sup> Productivity Commission, *5-year productivity Inquiry: A more productive labour market*, vol. 7 (7 February 2023).



### 3.2 Defining job security (and insecurity)

[49] The ILO publication, *From Precarious Work to Decent Work*, describes precarious employment as ‘inferior working conditions in all aspects of work: security, predictability, health and safety, pay and benefits, and access to social security.’<sup>44</sup> Another report, *Non-standard employment around the world*, identifies seven areas of potential work insecurity:

- risk of losing income-earning work, amplified by ease of dismissal;
- low or intermittent earnings that do not provide future certainty;
- too many hours, too few or hours that are constantly changing;
- lack of occupational health and safety protections/coverage;
- lack of or limited social security entitlements;
- poor or inadequate access to training opportunities; and
- low representation and barriers to fundamental workplace rights.<sup>45</sup>

[50] Separately, the ILO has developed and applies a ‘decent work’ framework, which centres on provision of broad-based employment rights and ‘opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity’.<sup>46</sup> Decent work is central to Goal 8 of the Sustainable Development Agenda for 2030.<sup>47</sup>

[51] In a forthcoming article, *Promoting secure work: Two proposals for Strengthening the National Employment Standards*, authors Dr Iain Campbell and Professor Sara Charlesworth describe labour insecurity as:

“[...] not just a risk of losing a job (and perhaps a risk of having difficulty finding another); it also concerns forms of insecurity *within a job*. Two forms of labour insecurity sit at the heart of current labour market changes in many societies and are integral to the concept of

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<sup>44</sup> International Labour Organisation, [From precarious work to decent work: outcome document to the workers' symposium on policies and regulations to combat precarious employment](#) (International Labour Office, Geneva, 2012), p.3.

<sup>45</sup> International Labour Organisation, *Non-standard employment around the world: Understanding challenges, shaping prospects* (International Labour Office, Geneva, 2016), pp.19-20.

<sup>46</sup> See International Labour Organisation, *Decent work* (Report of the Director-General to the International Labour Conference, 87th session, Geneva, 1999).

<sup>47</sup> United Nations Department of Economic and Social Affairs, *Transforming our world: the 2030 Agenda for Sustainable Development* <<https://sdgs.un.org/2030agenda>> accessed 27 November 2023; International Labour Organisation, *Decent work* <<https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>> accessed 27 November 2023.



insecure work: hours insecurity and earnings insecurity. Hours insecurity is a multi-faceted phenomenon, but it is summarily defined in an International Labour Organisation (ILO) Report as ‘too few hours, too many hours, or hours that are constantly changing’. Earnings insecurity is partly to do with low rates of remuneration, but it also overlaps with the important issue of working hours when intermittency or fluctuating hours of paid work leads to irregularity of income. In addition, we note the insecurity linked to inferior rights and entitlements, which function both as an independent source of insecurity and as a pathway for the emergence of other disadvantages.”<sup>48</sup>

[52] The ACTU report, *Lives on Hold: Unlocking the Potential of Australia's Workforce*, defines insecure work as ‘that which provides workers with little social and economic security, and little control over their working lives.’<sup>49</sup> The ‘indicators of insecure work’ developed and utilised by the independent research panel for the *Lives on Hold* report were:

- unpredictable, fluctuating pay;
- inferior rights and entitlements, including limited or no access to paid leave;
- irregular and unpredictable working hours, or working hours that, although regular, are too long or too few and/or non-social or fragmented;
- lack of security and/or uncertainty over the length of the job; and
- lack of voice at work on wages, conditions and work organisation.

[53] The Job Insecurity Report notes that there is no single definition of ‘insecure and precarious work’. The report draws on the definition employed by the ACTU in the *Lives on Hold* report, noting that it ‘provides an excellent starting point’.<sup>50</sup> Multiple job holding, low wages growth, de-unionisation, underemployment and labour underutilisation are each discussed in the report as key drivers of job insecurity.<sup>51</sup> The Job Insecurity Report, finalised some 10 years after *Lives on Hold*, also includes on-demand platform employment as another form of job insecurity.

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<sup>48</sup> Iain Campbell and Sara Charlesworth, (2023) ‘Promoting secure work: Two proposals for Strengthening the National Employment Standards’, [Manuscript submitted for publication], p.3 (citations omitted).

<sup>49</sup> Brian Howe, Paul Munro, Jill Biddington and Sara Charlesworth, ‘Lives on hold: unlocking the potential of the Australian Workforce: Report of the Independent Inquiry into Insecure Work’, (Australian Council of Trade Unions, 2012), p.1.

<sup>50</sup> Commonwealth of Australia, ‘Job insecurity report’ (Senate Select Committee on Job Security, 2022), p.16 at [2.17].

<sup>51</sup> *Ibid*, pp.30-37.



- [54] The Employment White Paper states that ‘job security [can be] understood as encompassing a worker’s reasonable certainty about tenure of employment, pay, and conditions.’<sup>52</sup> Irregular pay, unpredictable work patterns and limited or no entitlements contribute to work insecurity. Conversely, secure work is characterised by: ‘Permanent jobs [which] are the most secure form of employment because they guarantee a base salary and entitlements to workers, including leave and redundancy payments.’<sup>53</sup>
- [55] The RBA has published research examining job security and its impacts using measures of self-assessed job security from the Melbourne Institute’s Household, Income and Labour Dynamics in Australia (HILDA) Survey. Analysis conducted in 2018 suggested that feelings of insecurity were increasing across all industry sectors, with a slight drag on economic growth and productivity. Job insecurity was found to be higher in sectors with more casual employees and greater exposure to ‘international competition.’<sup>54</sup> Analysis also demonstrated a correlation between job security, broader economic conditions and wages growth.<sup>55</sup> However, as an average of less than 4 per cent of the population self-assessed as having a reasonable chance of job loss (greater than 50 per cent) in the next 12 months, job insecurity was not observed for a majority of Australian workers.<sup>56</sup>
- [56] Ultimately, job security is a multi-faceted concept with no single definition. The international and domestic literature identifies a variety of indicators of job security and insecurity. As might be expected, in many instances *secure* work can be defined by the same indicators that *insecure* work lacks. In summary, some of the commonly understood indicators of insecure work include:
- low, unpredictable or irregular income;
  - irregular, fragmented and/or unpredictable hours;
  - limited access or lack of access to paid leave, redundancy and other entitlements;

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<sup>52</sup> Commonwealth of Australia, ‘[Working Future: the Australian Government’s White Paper on Jobs and Opportunities](#)’ (Treasury, September 2023), p.48 at [3.1.2].

<sup>53</sup> Ibid.

<sup>54</sup> James Foster and Rochelle Guttman, ‘Perceptions of job security in Australia’ (Reserve Bank of Australia, Bulletin, 15 March 2018), p.5.

<sup>55</sup> See Gabrielle Penrose and Gianni La Cava, ‘Job loss, subjective expectations and household spending’ (Reserve Bank of Australia, Bulletin, August 2021); James Foster and Rochelle Guttman, ‘Perceptions of job security in Australia’ (Reserve Bank of Australia, Bulletin, 15 March 2018).

<sup>56</sup> James Foster and Rochelle Guttman, ‘Perceptions of job security in Australia’ (Reserve Bank of Australia, Bulletin, 15 March 2018), p.3.



- poor and/or limited security of tenure;
- uncertainty around hours or duration of employment;
- social and/or physical isolation; and
- low worker control.

[57] The common thread across these different dimensions appears to be the lack of certainty and control experienced by workers in relation to the circumstances of their employment. In an even broader sense, job insecurity has been described as any form of uncertainty surrounding employment that reduces wellbeing.<sup>57</sup>

### 3.3 Is job insecurity growing?

[58] Views on job security (and insecurity) are often subject to competing perspectives and analysis. This section acknowledges these different considerations as a background to later discussion, noting that much of the literature may be generated for particular 'sides' of the discussion.

[59] Non-standard work and purported links to job insecurity have been the subject of significant attention in scholarly and other literature. The Labor-led Senate Select Committee found that insecure and precarious forms of work – including part-time, casual, labour hire, on-demand and fixed-term contract roles – have increased and are increasing.<sup>58</sup> The Committee cited evidence that, while casual employment rates have remained steady, 'other forms of cost reduction that involve shifting risk to employees [...] have grown in prominence'.<sup>59</sup>

[60] Since releasing the *Lives on Hold* report in 2012, the ACTU has produced several reports on insecure work. These reports contend that insecure work is growing, is a significant issue for workers and the community, and requires a specific response from government and regulators.<sup>60</sup>

[61] In evidence to the Senate Select Committee, ACCI submitted that workers were increasingly interested in alternative forms of employment. In their view, non-standard arrangements 'have

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<sup>57</sup> Mark Wooden, 'Insecure employment: Do we really have a crisis?' in P Dawkins and A Payne eds., *Melbourne Institute Compendium 2022: Economic and Social Policy. Towards evidence-Based Policy Solutions*, University of Melbourne, pp.46-59, 48.

<sup>58</sup> Commonwealth of Australia, *Job insecurity report* (Senate Select Committee on Job Security, 2022), p.19 at [2.25].

<sup>59</sup> Commonwealth of Australia, *Job insecurity report* (Senate Select Committee on Job Security, 2022), p.16 at [2.15].

<sup>60</sup> Australian Council of Trade Unions, 'The rise of insecure work in Australia' (Change The Rules, No. 88, 2018); Australian Council of Trade Unions, 'The myth of the casual wage premium' (Change The Rules, No. 196, 2018); Australian Council of Trade Unions, 'Closing the loopholes: casual work' (ACTU Research Note, May 2023).





an increasingly important role to play in ensuring an agile and productive workplace as the needs of the modern economy cannot and will not be met by employing only permanent employees'.<sup>61</sup> Similar observations were made by the National Retail Association<sup>62</sup> and Australian Retailers Association,<sup>63</sup> among others.

[62] Data supports some of these claims. Research published by the University of Melbourne found that a range of labour force statistics show no rising trend in job insecurity over time. The study notes for example that data from the ABS show no obvious upward trend in unemployment or underemployment since 1980, and that the rate of labour underutilisation is about as low as it has been in three decades.<sup>64</sup> The study notes also that although the proportion of employed persons without access to paid leave entitlements (reasonably assumed to be casual employees) increased markedly during the 1980s and the first half of the 1990s, it has changed very little in the last 2 decades.<sup>65</sup>

[63] Longitudinal data analysis from the HILDA Survey demonstrated that, following labour market disruptions during the COVID-19 pandemic, perceptions of job insecurity increased markedly. Researchers noted that the mean perceived probability of dismissal increased from 11.1 per cent in 2019 to 13.4 per cent in 2020 – the largest single year increase in the measure.<sup>66</sup> Perceived job insecurity across industries was also surveyed and was highest in the Information Media and Telecommunications Administrative and Support Services, Manufacturing and Mining industries.<sup>67</sup>

[64] In the AWR 2022-23 decision, the Expert Panel observed that the capacity of persons to obtain employment over the previous 12 months has been at its highest point since the 1970s and that

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<sup>61</sup> Australian Chamber of Commerce and Industry, 'Submission 71 to Senate Select Committee', *Inquiry on Job Security*, March 2021, p.18.

<sup>62</sup> National Retail Association, 'Submission 29 to Senate Select Committee', *Inquiry on Job Security*, 31 March 2021.

<sup>63</sup> Australian Retailers Association, 'Submission 25 to Senate Select Committee', *Inquiry on Job Security*, 31 March 2021.

<sup>64</sup> Mark Wooden, 'Insecure employment: Do we really have a crisis?' in P Dawkins and A Payne eds., *Melbourne Institute Compendium 2022: Economic and Social Policy. Towards evidence-Based Policy Solutions*, University of Melbourne, pp. 46-59, 49.

<sup>65</sup> *Ibid*, p.52.

<sup>66</sup> Roger Wilkins et al, *the Household, Income and Labour Dynamics in Australia Survey: Selected findings from Waves 1 to 20 – The 17th Annual Statistical Report of the HILDA Survey* (Melbourne Institute, University of Melbourne, 2022), p.86.

<sup>67</sup> *Ibid*, pp.86-87.



most of the job growth in the past 12 months has been in full-time employment.<sup>68</sup> The Expert Panel observed that, excluding the COVID-19 lockdown-affected period in mid-2020, the proportion of casual employees, based on quarterly data, was at its lowest since August 2014. The Expert Panel also observed that data suggests the capacity of persons to access secure employment across the economy is currently at its highest for the last decade.<sup>69</sup>

### 3.3.1 Job security and flexible work

[65] Discourse on job security includes competing perspectives on the beneficial or detrimental aspects of flexible work. These competing perspectives vary depending on whether the discourse is referring to flexibility to the benefit of the employer or flexibility to the benefit of employee. In essence, unions tend to highlight the negative aspects of flexible engagement of workers, such as increased rates of casualisation or the use of insecure labour hire workers to perform jobs that could otherwise go to permanent employees. Employers highlight that flexibility is a reality of modern workplaces and is required to meet worker expectations and work-life balance considerations. As discussed above, many employers utilise flexible employment arrangements to address temporary surges in demand.

[66] For instance, the Australian Industry Group (Ai Group) presented evidence to the Inquiry on Job Security highlighting the mutual benefits of non-standard, flexible work: 'Australia's workplace laws must recognise and accommodate the need for Australian businesses to engage employees and contractors in different ways.'<sup>70</sup> Conversely, limitations on different employment types would "stifle innovation to the detriment of businesses, workers and the whole community'.<sup>71</sup>

[67] While the final report asserted that insecure and precarious forms of work were growing, the dissenting report by Liberal and National Senators did not find that job insecurity is a widespread issue. Rather:

"Successful [labour market] reform would drive improved productivity and efficiency, while increasing the opportunity for more Australians to benefit from the dignity of work with

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<sup>68</sup> *Annual Wage Review 2022-23* [2023] FWCFB 3500 at [143].

<sup>69</sup> *Ibid* at [144].

<sup>70</sup> Ai Group, 'Submission 77 to Senate Select Committee', *Inquiry on Job Security*, 9 April 2021, p.3.

<sup>71</sup> *Ibid*.



additional flexibility working to mutual advantage. Australians increasingly want to fit work around life, rather than life around work – that demands flexibility.”<sup>72</sup>

- [68] Some literature acknowledges that while non-standard work may give rise to job insecurity, such work should not be considered insecure in all cases. Both employers and employees benefit from greater flexibility, including utilising non-standard arrangements to lower barriers to participation.<sup>73</sup> Casual employment and flexible arrangements have also been found to boost workforce participation, notably for women, young people and others ‘seeking a foothold in the labour market.’<sup>74</sup> Flexible work is also a legitimate requirement for industries like hospitality, retail or tourism that experience fluctuating levels of demand.<sup>75</sup>
- [69] The FW Act includes the right to request flexible working arrangements for certain groups of employees including those with caring responsibilities, serious health issues or disability. The SJBPA Act amended the FW Act provisions from 6 June 2023, to require an employer to take certain steps when responding to a request and to provide access to dispute resolution in the Commission if a dispute cannot be resolved at the workplace level. Early cases that have considered the amended provisions highlight some of the limitations of the right to request flexible working arrangements. In *Quirke v BSR Australia Ltd*, the Full Bench established that requests for flexible arrangements carry an evidentiary onus under ss 65A(1)–(3) of the FW Act, which were not met in that instance.<sup>76</sup> Furthermore, in *Gregory v Maxxia Pty Ltd* the Commission held that an employer is ‘within its rights to require its employees to return to the office in accordance with their contracts of employment’.<sup>77</sup> In both cases, employees were unsuccessful in disputing employers’ refusal of flexible work arrangements.

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<sup>72</sup> Commonwealth of Australia, *Job insecurity report* (Senate Select Committee on Job Security, 2022), p.195 at [1.4].

<sup>73</sup> Tapas Ray and Regina Pana-Cryan, ‘Work flexibility and work-related well-being’ (2021) 18(6) *International Journal of Environmental Research and Public Health*, p.3254; Nous Group, *Flexible work, good for business? Modelling the bottom line impact of flexible work for the Office of Prevention and Women’s Equality (OPWE)* (Victorian Government, 13 March 2018); Geoff Gilfillan, ‘Characteristics and use of casual employees in Australia’ (Research Paper Series 2017-18, Parliamentary Library, Parliament of Australia, 19 January 2018); Workplace Gender Equality Agency, <<https://www.wgea.gov.au/flexible-work>>, accessed November 2023.

<sup>74</sup> Geoff Gilfillan, ‘Recent and long-term trends in the use of casual employment’ (Research Paper Series 2021-22, Parliamentary Library, Parliament of Australia, 24 November 2021), pp.5-6, 7.

<sup>75</sup> Commonwealth of Australia, *Job insecurity report* (Senate Select Committee on Job Security, 2022), p.92 at [5.23].

<sup>76</sup> [2023] FWCFB 209 at [38], [45]-[46].

<sup>77</sup> [2023] FWC 2768 at [10].



### 3.4 Employment types and job insecurity

[70] While it is possible for any type of worker to be affected by insecure employment, certain employment types appear more susceptible including 'casual work, fixed-term contracts, seasonal work, contracting and labour hire.'<sup>78</sup> Digital platform employment or 'gig work' can be added to these categories.

[71] Using data from the ABS, this section provides a snapshot of these categories. Most relevant is data compiled in the Commission's Statistical Report, prepared for the AWR 2022-23, which presents data on various indicators relating to secure work in Chapter 12.

#### 3.4.1 Casual employment

[72] Casual employment is the employment type available through modern awards that is most strongly associated with job insecurity. This is unsurprising as casual employment is defined as employment offered to a person on the basis that the employer makes no firm advanced commitment to continuing and indefinite work according to an agreed pattern of work for the person and the person accepts the offer on that basis.<sup>79</sup> As discussed later, a casual employee is specifically excluded from many of the rights and entitlements attached to permanent work.

[73] The ABS measures casual employment as employees without paid sick leave or paid holiday (annual) leave entitlements. Chart 12.1 in the Statistical report (re-produced below as Chart 1) presents the proportion of employees in casual employment over the period that regular quarterly data is available – August 2014 to February 2023. The chart shows that, in February 2023, 22.1 per cent of all employees could be considered casual employees. Around two-thirds of these employees work part-time hours (less than 35 hours per week).

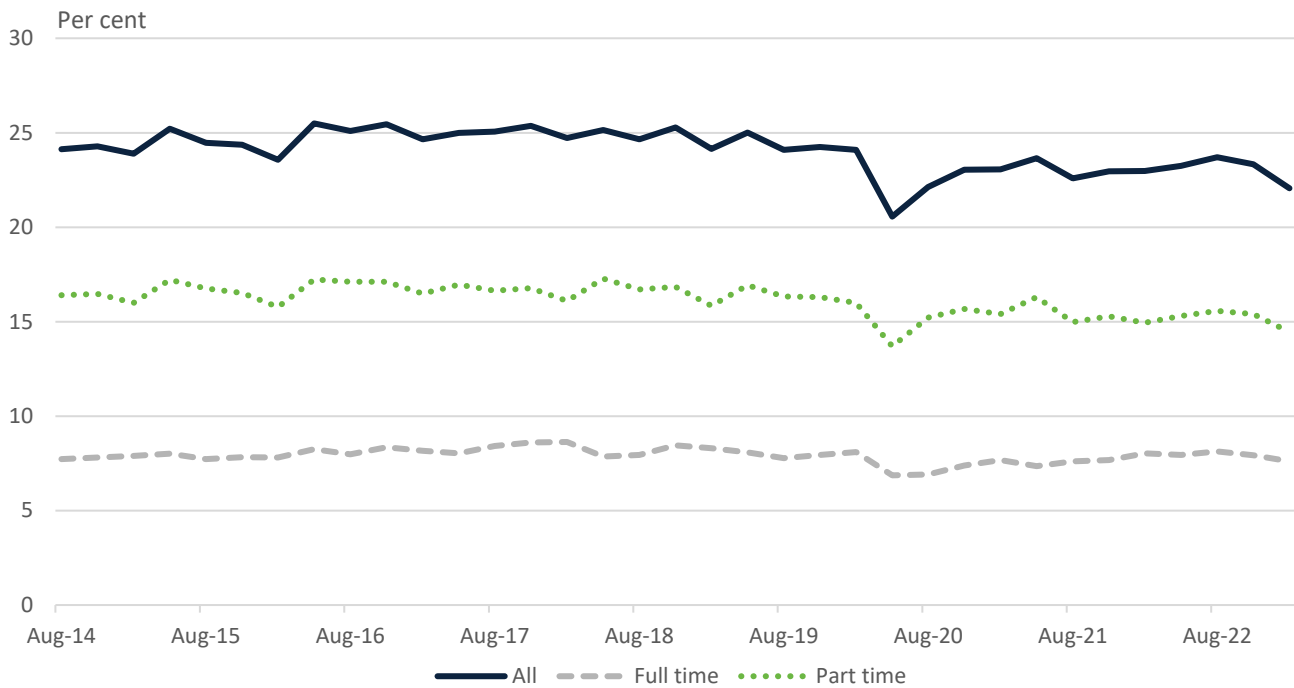
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<sup>78</sup> See, eg, Brian Howe et al, 'Lives on hold: unlocking the potential of the Australian Workforce' (Report of the Independent Inquiry into Insecure Work, Australian Council of Trade Unions, 2012), p.1.

<sup>79</sup> *Fair Work Act 2009* (Cth) s 15A.



**Chart 1: Proportion of employees without paid leave entitlements, 2014 to 2023**



Note: Data are quarterly.

Source: Fair Work Commission, *Statistical report—Annual Wage Review 2022–23*, Chart 12.1; ABS, *Labour Force, Detailed*, February 2023.

[74] In August 2022, a record 2.7 million employees were casual.<sup>80</sup> Yet, since the early-2000s, the share of casual employees as a proportion of all employees has remained relatively stable or decreased (slightly) over time.<sup>81</sup> The Commission observed that the composition of jobs growth over the last 12 months to April 2023 led to a reduction in casual employment, from a peak of 25.5 per cent in May 2016.<sup>82</sup>

[75] Previous analysis by Commission staff finds higher use of casual employees in the modern award-reliant workforce, where casual employees make up almost half of the cohort.<sup>83</sup> Even though there has been a decline in the proportion of award-reliant employees in casual employment, there was no consistent trend over the last decade.<sup>84</sup>

<sup>80</sup> Australian Bureau of Statistics, *Working arrangements* (14 December 2022).

<<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/working-arrangements/latest-release> accessed November 2023.

<sup>81</sup> *Ibid.*

<sup>82</sup> *Annual Wage Review Decision 2022–23* [2023] FWCFB 3500 at [144].

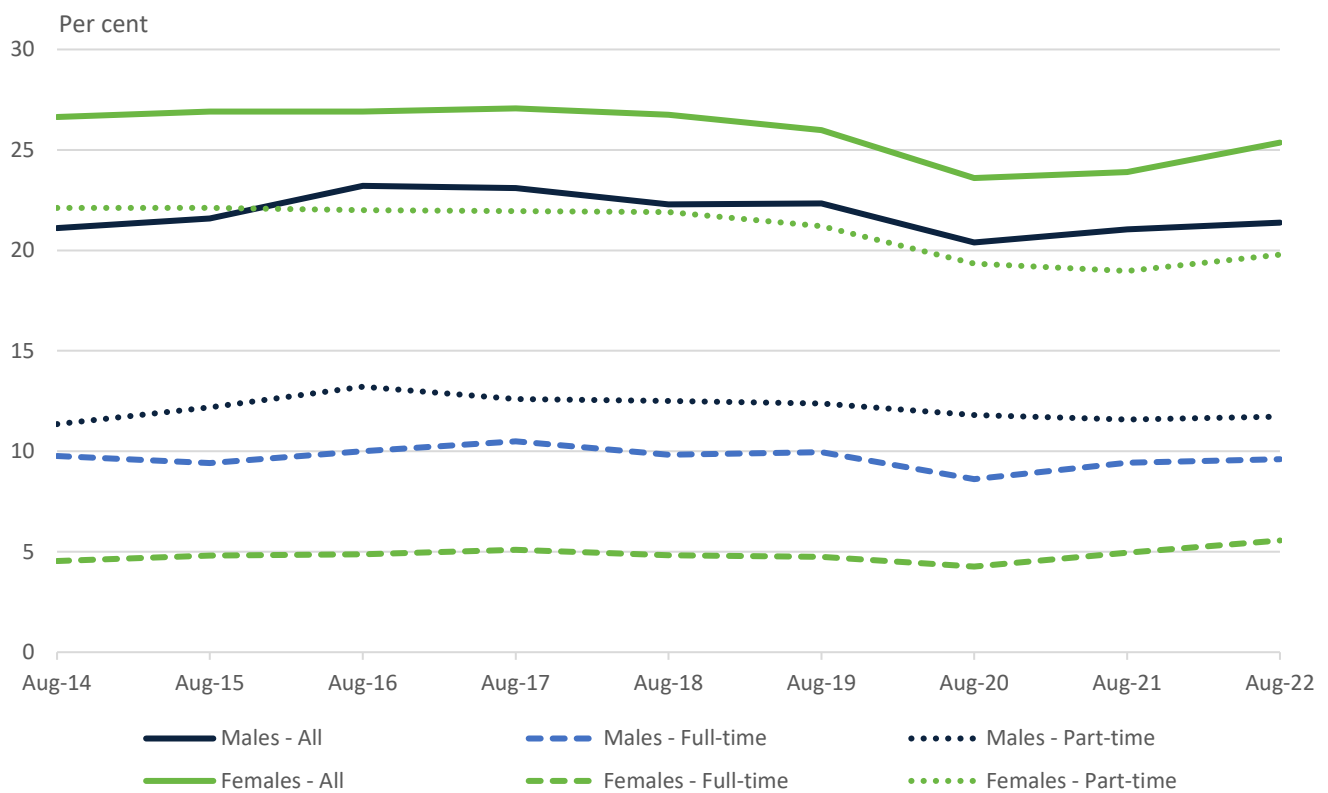
<sup>83</sup> *Ibid.* at [145].

<sup>84</sup> *Ibid.*



[76] Chart 12.1a in the Statistical report (re-produced below as Chart 2) shows that a higher proportion of females were employed on a casual basis than males, and that they were also more likely to be working part-time hours. Males employed on a casual basis were more likely to be working full-time hours. While casual employees exist in every industry, they are most common in the Accommodation and Food Services, Administrative and Support Services and Arts and Recreation Services industries.<sup>85</sup> The overrepresentation of women in non-standard employment associated with job insecurity is discussed further below.

**Chart 2: Proportion of employees without paid leave entitlements, by gender 2014 to 2022**



Note: Data are at August of each year.

Source: ABS, *TableBuilder: Characteristics of Employment*, August 2022.

### 3.4.2 Part-time employment

[77] Part-time employees work less than 35 hours per week (as defined by the ABS), although work may be performed according to a regular pattern. As discussed, Australia reports a high share of part-time employment; by some estimates, permanent part-time employment quadrupled for

<sup>85</sup> *Statistical report – Annual Wage Review 2022-23* (Version 6, 18 May 2023), pp.113-114.



men and more than doubled for women between 1996 and 2016.<sup>86</sup> The latest data show that permanent part-time employment has more than doubled for men and increased by almost 20 per cent for women between 2016 and 2023.<sup>87</sup>

[78] While part-time employment can be subject to the indicators of insecure work noted above, it is not considered an inherently insecure form of employment. <sup>88</sup> In fact, part-time hours may be a valued or desirable attribute for a substantial number of workers.

### 3.4.3 Fixed term employment

[79] A fixed-term employee is defined in the ABS Survey of Employee Earnings and Hours (EEH) as anyone 'employed for a specified period of employment, [who] may be entitled to paid leave'.<sup>89</sup> The Commission's Statistical report indicated that between 3.5 and 4 per cent of employees were employed for a specified period (a fixed term) between 2014 and 2022.<sup>90</sup>

[80] Fixed-term employment is not common for employees with pay set through awards. Analysis of EEH data by Commission staff undertaken in November 2023 suggests 4.0 per cent of award-reliant employees are engaged on a fixed-term basis compared to 5.0 per cent across all employees (see Annexure B—Award-reliant employees in fixed-term employment). Fixed-term employment is most common for award-reliant employees working in the Education and Training industry, at 12.8 per cent, followed by Professional, Scientific and Technical Services (8.7 per cent). However, the small number of employees in fixed-term employment means that these estimates are less reliable than is typically the case for ABS data. Eight industries were found to have no award-reliant employees engaged on a fixed-term basis.

[81] Fixed term contracts can support businesses to source workers during periods of intermittent demand, but when used over an extended period of time for roles that could otherwise be permanent may exacerbate job insecurity. From 6 December 2023, new rules apply to the use of fixed term contracts under changes introduced by the SJBPA Act. These changes limit the use,

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<sup>86</sup> Geoff Gilfillan, 'Characteristics and use of casual employees in Australia' (Research Paper Series 2017-18, Parliamentary Library, Parliament of Australia, 19 January 2018), p.8; see also Natasha Cassidy and Stephanie Parsons, 'The rising share of part-time employment' (Reserve Bank of Australia, Bulletin, 15 September 2017), pp.19-26.

<sup>87</sup> Australian Bureau of Statistics, [Characteristics of Employment](#) (13 December 2023).

<sup>88</sup> Senate Select Committee Report on Job Security, [The job insecurity report](#), February 2022, at [1.3].

<sup>89</sup> Australian Bureau of Statistics, *Employee Earnings and Hours, Australia methodology: Glossary* (19 January 2022).

<sup>90</sup> *Statistical report – Annual Wage Review 2022-23* (Version 6, 18 May 2023) at [116](Chart 12.2).



extension and renewal of fixed term contracts to a maximum of two years.<sup>91</sup> One exception to this change is where fixed term contracts are permitted by terms of modern awards.<sup>92</sup>

### 3.4.4 Labour hire arrangements

[82] Labour hire employment is characterised by a third-party arrangement where workers are employed by the labour hire firm as part of a ‘pool’ of potential workers.<sup>93</sup> In a labour hire arrangement, the direct employment relationship is between the labour hire firm and labour hire worker, not the ‘host’ employer. Workers may be engaged as employees or independent contractors.<sup>94</sup>

[83] Labour hire agencies vary significantly in size, scope and industry focus. Types of labour hire arrangements are also diverse, including filling short-term vacancies, addressing seasonal demand, longer-term work alongside permanent employees, meeting particular business functions and potentially a firm’s entire business.<sup>95</sup>

[84] According to the Commission’s Statistical report, 2–2.5 per cent of employees worked in businesses that provide labour hire services.<sup>96</sup> The Third Interim Report of the Senate Select Committee Inquiry, focusing on labour hire, estimated that the sector employed approximately 360,000 people in both skilled and semi-skilled roles.<sup>97</sup>

### 3.4.5 Independent contracting/digital platform work

[85] The recent advent of independent contracting in the on-demand platform or ‘gig’ economy has been identified as a form of insecure work. In the literature, workers may be classified as

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<sup>91</sup> Explanatory Memorandum, Fair Work Legislation Amendment (Secure Jobs Better Pay) Bill 2022 (Cth) at [559].

<sup>92</sup> Ibid at [571]-[573].

<sup>93</sup> Australian Bureau of Statistics, [Employment arrangements](#) (15 February 2022).

<sup>94</sup> See Commonwealth of Australia, *Third interim report: labour hire and contracting* (Senate Select Committee on Job Security, 2021), pp.9–10; Victorian Government, *Victorian Inquiry into the labour hire industry and insecure work* (Industrial Relations Victoria, 2016), pp. 48–49.

<sup>95</sup> Victorian Government, *Victorian Inquiry into the labour hire industry and insecure work* (Industrial Relations Victoria, 2016), p.52.

<sup>96</sup> *Statistical report – Annual Wage Review 2022-23* (Version 6, 18 May 2023), p.117.

<sup>97</sup> Commonwealth of Australia, *Third interim report: labour hire and contracting* (Senate Select Committee on Job Security, 2021), p.11.





'dependent contractors' or 'employee-like' to capture and reflect the alleged insecurity of these arrangements.<sup>98</sup>

[86] The gig economy describes a variety of work and, as with other types of insecure employment, there is no universally accepted definition.<sup>99</sup> The United Nations Economic Commission for Europe defines digital platform employment as work 'performed [primarily] through an online tool or an app that matches supply and demand for employment, most often based on an algorithm.'<sup>100</sup> Digital platform work was further defined as being organised around 'tasks' rather than 'jobs'. Major platforms in Australia include Uber, Airtasker, Didi, Menulog, Mable, Uber Eats and Amazon.<sup>101</sup>

[87] ABS analysis published in November 2023 suggests that those who had undertaken digital platform work in the last 4 weeks comprised approximately 1 per cent of the working population.<sup>102</sup> The employment white paper, *Working Future*, published in September 2023, estimated that as many as 7 per cent of workers engaged with jobs via a digital platform in 2019. While remaining low, this figure represents a substantial increase from just 0.5 per cent of workers in 2015. For 97 per cent of gig workers, platform-based work is not their only source of income.<sup>103</sup>

[88] Research suggests that most digital platform workers are working part-time hours via digital platforms.<sup>104</sup> ABS data from November 2023 found 53 per cent of people undertaking digital

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<sup>98</sup> See International Labour Organisation, 'Disguised employment/dependent self-employment'

<[https://www.ilo.org/global/topics/non-standard-employment/WCMS\\_534833/lang--en/index.htm](https://www.ilo.org/global/topics/non-standard-employment/WCMS_534833/lang--en/index.htm)> accessed 27 November 2023; Valerio De Stefano, 'The rise of the 'just-in-time workforce: on-demand work, crowdwork and labour protection in the 'gig economy' (Conditions of Work and Employment Series, No. 71, International Labour Office, 2016).

<sup>99</sup> Australian Bureau of Statistics, [Employment arrangements](#) (15 February 2022).

<sup>100</sup> United Nations Economic Commission for Europe, *Handbook on forms of employment* (United Nations, Geneva, 2022), p.40.

<sup>101</sup> Productivity Commission, [5 year Productivity Inquiry: A more productive labour market](#), Volume 7, 7 February 2023, p.134.

<sup>102</sup> Australian Bureau of Statistics, [Digital platform workers in Australia](#) (13 November 2023).

<sup>103</sup> Commonwealth of Australia, [Working Future: the Australian Government's White Paper on Jobs and Opportunities](#) (Treasury, September 2023), p.49.

<sup>104</sup> Paula McDonald et al, *Digital platform work in Australia: preliminary findings from a national survey* (Queensland University of Technology, University of Adelaide and University of Technology Sydney, 18 June 2019), p.44; Victorian Government, *Report of the Inquiry into the Victorian on-demand workforce* (Industrial Relations Victoria, 2020), p.38 at [231].



platform work held other jobs, with a majority of workers motivated by supplementing their income or the flexibility of work.<sup>105</sup>

[89] While enjoying greater flexibility and autonomy, independent contractors receive few workplace entitlements, protections and are typically responsible for their own income tax, insurance and superannuation.<sup>106</sup> Viewed in combination with low hourly rates and intermittent work, lack of entitlements may create detrimental impacts for workers.

[90] The applicability of modern awards to workers in the gig economy was considered by the Full Bench in *Re Menulog Pty Ltd*<sup>107</sup> which concerned an application for a new On Demand Delivery Industry Award. Menulog Pty Ltd contended that the 'on demand delivery services industry' was not covered by any operative modern award, including the *Road Transport and Distribution Award 2020* (Road Transport Award) and *Fast Food Award 2010* (Fast Food Award). The Transport Workers' Union of Australia and Australian Industry Group both submitted that the Road Transport Award applied. The Full Bench determined that the scope of the Road Transport Award was clear and it covered employers and their employees in the on-demand delivery services industry.<sup>108</sup> Employee classification definitions described in Schedule B of the Road Transport Award were deemed relevant to the routine duties performed by Menulog couriers.

### 3.5 Impacts of insecure work

[91] Literature suggests that insecure employment is characterised by higher incidence of psychosocial hazards that may be harmful to employee wellbeing.<sup>109</sup> For instance, the Job Insecurity Report contended: 'Empirical evidence shows that insecure work has strong detrimental impacts on the physical and mental health of individuals, and often negatively impacts family life, social connectedness, and personal relationships.'<sup>110</sup> The Employment White Paper cites research showing a strong link between job insecurity and poor physical and mental

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<sup>105</sup> Australian Bureau of Statistics, [Digital platform workers in Australia](#) (13 November 2023).

<sup>106</sup> Jaan Murphy, 'Regulating the 'gig' economy as a form of employment' (Briefing Book for the 47th Parliament, Parliamentary Library, June 2022), pp.132-133.

<sup>107</sup> [\[2022\] FWCFB 5](#)

<sup>108</sup> Ibid; see also *Proposed On Demand Delivery Services Award (Menulog)* (AM2021/72).

<sup>109</sup> See, eg, Stavroula Leka and Aditya Jain, *Health impact of psychosocial hazards at work: an overview* (World Health Organisation, Geneva, 2010), p.5.

<sup>110</sup> Commonwealth of Australia, *Job insecurity report* (Senate Select Committee on Job Security, 2022), at [3.60].



health, job performance and firm productivity.<sup>111</sup> Even when adjusting for age, job control, job demands and available social supports, insecure work has been shown to detrimentally impact worker health and wellbeing.<sup>112</sup> These issues may be viewed with an intersectional lens, given the strong overlaps between insecure employment types and workers' personal characteristics.

[92] This section gives an overview of the impacts of job insecurity as presented in the literature. Discussion is grouped under the themes of pay and conditions; career progression; retention and motivation; health and wellbeing; and, social connection. Evidence for each theme varies between and across the literature, with most findings centring on the impact of pay and conditions or health and wellbeing.

### 3.5.1 Pay and conditions

[93] There is a strong interrelationship between insecure employment and lower pay. ABS data suggests a correlation between low pay and lack of leave entitlements. For the lowest 25 per cent of earners, just 44 per cent had paid sick or holiday leave entitlements. In the lowest 10 per cent of earners, just 23 per cent were entitled to paid leave.<sup>113</sup>

[94] Evidence also suggests that casual employees earn lower *weekly* wages and lower *hourly* wages compared to permanent employees. In August 2023, median hourly earnings were \$42.86 for permanent employees and \$31.00 for casual workers, as measured by employees without leave entitlements.<sup>114</sup> Longitudinal data collected between 2001 and 2014 for the HILDA Survey suggests a long-term 'wage penalty' of 10 per cent between casual and permanent employees.<sup>115</sup>

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<sup>111</sup> Commonwealth of Australia, [Working Future: the Australian Government's White Paper on Jobs and Opportunities](#) (Treasury, September 2023), p.48.

<sup>112</sup> See, e.g., Stavroula Leka and Aditya Jain, *Health impact of psychosocial hazards at work: an overview* (World Health Organisation, Geneva, 2010), p.57.

<sup>113</sup> Australian Bureau of Statistics, *Working arrangements* (14 December 2022).

<sup>114</sup> Australian Bureau of Statistics, *Characteristics of employment, Table 1 - Employee earnings, 1975-2023* (13 December 2023); see also Commonwealth of Australia, *Job insecurity report* (Senate Select Committee on Job Security, 2022), pp.80-82. Data analysis from the Parliamentary Library for the Select Committee suggested a steady increase in the median hourly wage gap between permanent and casual employees, growing from \$4.08 in 2004 to \$10.09 in 2020. This smaller gap was noted to be more indicative, due to the distorting effects of JobKeeper in 2020.

<sup>115</sup> Irma Mooi-Reci and Mark Wooden, 'Causal employment and long-term wage outcomes' (2017) 70(9) *Human Relations*, p.1076.



The same study found similar income gaps between permanent and other employees in virtually all countries where data was available.

- [95] In addition to low pay, digital platform employment is associated with expenses that the individual worker must account for as an independent contractor (for example, income tax, insurance and petrol expenses).<sup>116</sup> The Inquiry into the Victorian on-demand workforce estimated that costs to rideshare drivers ranged from half to two-thirds of their revenue – already low at a national average of \$14 per hour.<sup>117</sup> In effect, these costs lower actual wages.
- [96] Low pay and unpredictable hours hinder workers' ability to budget, plan ahead (including for retirement) and meet basic living costs like bills, family commitments, rent and/or mortgages.<sup>118</sup> Research further indicates that low pay can incentivise people taking up additional work, when available, even in circumstances where this is unsafe.<sup>119</sup> In addition to locking people into a cycle of precarious earnings and financial insecurity, low pay itself has been found to contribute to workplace stress and mental ill health (see below).
- [97] Data prepared for the AWR 2022-23 suggests that around 25 per cent of employees had income that varied from one pay period to the next, and around 20 per cent did not have guaranteed minimum hours.<sup>120</sup> The proportion of employees who had worked in their main job for less than 1 year was below 20 per cent between 2015 and 2021. However, this increased in 2022 for both males and females.<sup>121</sup>

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<sup>116</sup> Commonwealth of Australia, *First interim report: on-demand platform work in Australia* (Senate Select Committee on Job Security, 2021), p.27 at [2.57].

<sup>117</sup> Victorian Government, *Report of the Inquiry into the Victorian on-demand workforce* (Industrial Relations Victoria, 2020), p.95 at [661]-[664]. Note that there is no consistent measure of on-demand platform wages. Estimates of hourly rates vary from \$22.80 per hour (after expenses) to as little as \$12.88 (after expenses). There is also significant diversity between sectors. For example, Hireup workers receive a higher hourly rate as casual employees under the Social, Home Care and Community Services Industry Award 2010. Estimates for each platform are discussed in detail in the first interim report of the Senate Inquiry into Job Security; pp.36-57.

<sup>118</sup> Jill Biddington et al, 'Lives on hold: Unlocking the potential of the Australian Workforce' (Report of the Independent Inquiry into Insecure Work, Australian Council of Trade Unions, 2012), pp.5, 20, 37, 43, 46.

<sup>119</sup> Michael Quinlan, 'The effects of non-standard forms of employment on worker health and safety' (Conditions of Work and Employment Series, No. 67, International Labour Office, 2015), p.16.

<sup>120</sup> *Statistical report – Annual Wage Review 2022-23* (Version 6, 18 May 2023), p.117 [Chart 12.4a].

<sup>121</sup> *Statistical report – Annual Wage Review 2022-23* (Version 6, 18 May 2023), p.117 [Chart 12.6], [Chart 12.6a].



### 3.5.2 Retention and career progression

- [98] In certain contexts, non-standard employment may provide opportunities for individuals with barriers to employment to (re)enter the labour market and for people, especially women, with dependents to find flexible work opportunities.<sup>122</sup> Benefits of non-standard work, including greater flexibility, lower entry barriers and improved work-life balance, are reinforced by many employees and employers.<sup>123</sup> However, studies suggest that worker benefits are limited to circumstances where non-standard employment is a result of worker choice and the job itself has decent conditions. A 2016 report by the ILO states that, when combined with otherwise poor conditions, non-standard roles can become ‘traps’ that inhibit young people’s career progression and contribute to longer cycles of low or intermittent earnings.<sup>124</sup>
- [99] The fragmented nature of insecure work has been found to hinder skills development, career progression and longer-term career mobility. The ILO observes that non-standard employment ‘affects basic human resource management practices such as employee selection, training and skills development, career planning and retention of staff.’<sup>125</sup> Non-standard workers of any description have also been found to have significantly higher transition rates into unemployment or inactivity.<sup>126</sup> Firms themselves may be affected over time through a restricted ability to respond to change and higher employee turnover.

### 3.5.3 Health and wellbeing

- [100] There is substantial evidence that job insecurity contributes to adverse physical and psychological health outcomes.<sup>127</sup> The organisation, allocation and type of work being performed

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<sup>122</sup> International Labour Organisation, *Non-standard employment around the world: Understanding challenges, shaping prospects* (International Labour Office, Geneva, 2016), p.186.

<sup>123</sup> Commonwealth of Australia, *First interim report: on-demand platform work in Australia* (Senate Select Committee on Job Security, 2021), p.59; see also Scott Barklamb, ‘Wake-up call for a dysfunctional system: employer perspectives on Industrial Relations in 2020’ (2021) 63(3) *Journal of Industrial Relations*, p.415.

<sup>124</sup> International Labour Organisation, *Non-standard employment around the world: Understanding challenges, shaping prospects* (International Labour Office, Geneva, 2016), p.138.

<sup>125</sup> *Ibid*, p.171.

<sup>126</sup> *Ibid*, p.189.

<sup>127</sup> See, e.g., Francis Green, ‘Health effects of job insecurity: job insecurity adversely affects health, but employability policies and otherwise better job quality can mitigate the effects’ (2020) 212(2) *IZA World of Labor* pp.1–11; Rachel Summer et al,



are each said to play a role. Subjective insecurity may be experienced as either fear of *losing the job* or *losing paid hours within the job*.<sup>128</sup> Perceived and actual job insecurity have been found to have similar impacts on health and wellbeing.

- [101] In a submission to the Senate Inquiry on Job Security, the Australian Medical Association observed that job insecurity is ‘associated with a range of negative health outcomes’ including: stress, anxiety and fatigue; psychological distress and mental illness; increased risk of cardiovascular disease, hypertension and other health conditions.<sup>129</sup> Research has also found connections between poor workplace experiences and sleep deprivation, unhealthy eating habits and obesity.<sup>130</sup> Mental health impacts can be particularly significant, but remain difficult to recognise. At its most extreme, insecure work has been linked to depression and suicide.<sup>131</sup>
- [102] Occupational health and safety issues associated with insecure work have been reported across the international literature over a long period.<sup>132</sup> Non-standard work is often associated with increased prevalence of irregular/long hours, physical strain and, in particular, greater risks of

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‘Unemployment, employment precarity, and inflammation’ (2020) 83 *Brain, Behaviour and Immunity*, pp.303–308; Ana Llena-Nozal, ‘The effect of work status and working conditions on mental health in four OECD countries’ (2009) 209 *National Institute Economic Review*, p.72; Peter Butterworth et al, ‘The psychosocial quality of work determines whether employment has benefits for mental health: results from a longitudinal national household panel survey’ (2011) 68(11) *Occupational Environmental Medicine*, p.806.

<sup>128</sup> Ian Campbell, ‘On-call and related forms of causal work in New Zealand and Australia’ (Conditions of Work and Employment Series, No. 102, International Labour Office, 2018), p.22.

<sup>129</sup> Commonwealth of Australia, *Job insecurity report* (Senate Select Committee on Job Security, 2022), pp.44–45 at [3.12]-[3.13].

<sup>130</sup> See Oliver Buxton et al, ‘Association of sleep adequacy with more healthful food choices and positive workplace experiences among motor freight workers’ (2009) 99(S3) *American Journal of Public Health Supplement*, p.636.

<sup>131</sup> Commonwealth of Australia, *Job insecurity report* (Senate Select Committee on Job Security, 2022), p.51 at [3.34]-[3.35]; see also Stavroula Leka and Aditya Jain, *Health impact of psychosocial hazards at work: an overview* (World Health Organisation, Geneva, 2010), pp.55–56: summary of international literature, pp.63–85.

<sup>132</sup> See, e.g, Phillip Bohle et al, *The evolving work environment in New Zealand: implications for occupational health and safety* (NOHSAC Technical Report 10, Wellington, 2008), pp.56, 59–71; Michael McGann et al, ‘Labour casualisation and the psychosocial health of workers in Australia’ (2016) 30(5) *Work, Employment and Society*, p.766; Sarah Oxenbidge and Maja Moensted, ‘The relationship between payment systems, work intensification and health and safety outcomes: a study of hotel room attendants’ (2011) 9(2) *Policy and Practice in Health and Safety*, p.7.



physical assault, intimidation and verbal abuse. In these instances, occupational health and safety can play an important role in worker health and wellbeing.<sup>133</sup>

[103] Australian research into food delivery workers has highlighted health and safety concerns with how work is allocated and managed, in addition to the design of platforms themselves, as pressure to work faster or maintain a high rating may lead to drivers to engage in 'riskier' behaviours.<sup>134</sup>

[104] Insecurity itself may also shift organisational and operational risks to workers. For example, presenteeism (or when workers go to work ill) was recorded at significant levels in the 2021 ACTU employee survey where:

- 67 per cent of injured or sick workers identified as insecure did not take time off work due to concerns about how this would affect their job;
- 50 per cent of respondents had no paid leave available;<sup>135</sup>
- 50 per cent of respondents who were sexually harassed took no action for fear of negative consequences in their employment.<sup>136</sup>

[105] With wide-ranging impacts on health and wellbeing, job insecurity has flow-on impacts on job performance and firm productivity.<sup>137</sup> Suicide Prevention Australia estimates the costs of work-

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<sup>133</sup> Michael Quinlan, 'The effects of non-standard forms of employment on worker health and safety' (Conditions of Work and Employment Series, No. 67, International Labour Office, 2015); Maria McNamara, *The hidden health and safety costs of casual employment* (Industrial Relations Research Centre, University of New South Wales, Sydney, 2006); International Labour Organisation, *Non-standard employment around the world: Understanding challenges, shaping prospects* (International Labour Office, Geneva, 2016), pp.226–227.

<sup>134</sup> See, eg, Elizabeth Convery et al, 'Work health and safety of food delivery workers in the gig economy' (Centre for Work Health and Safety, Behavioural Insights Team and Macquarie University, NSW Government, 2020), pp.28–32.

<sup>135</sup> Note that a 'Sick Pay Guarantee' has operated in Victoria since 2022. This program provides up to 38 hours of leave per year for eligible casual and contract workers, paid at the national minimum wage: 'Victorian Sick Pay Guarantee' on Victorian Government *Sick Pay Guarantee* (6 October 2023) <<https://www.vic.gov.au/sick-pay-guarantee>>. The Sick Pay Guarantee was introduced following a pilot program and extensive consultation, during which employees and employers highlighted issues arising from non-standard arrangements: 'Victorian Sick Pay Guarantee public consultation' on Victorian Government *Sick Pay Guarantee* (20 January 2023) <<https://www.vic.gov.au/victorian-sick-pay-guarantee-public-consultation>>.

<sup>136</sup> Australian Council of Trade Unions, *Work shouldn't hurt: the state of work health and safety in Australia 2021* (ACTU D No. 56/2021, Melbourne, 2021), pp.18, 23–24. Note that the research defines 'insecure work' as fixed-term contractors (including fulltime and part-time), independent contractors, casual and gig workers; p.2.

<sup>137</sup> Francis Green, 'Health effects of job insecurity: job insecurity adversely affects health, but employability policies and otherwise better job quality can mitigate the effects' (2020) 212(2) *IZA World of Labor*.



related mental illness and injury alone as between \$15.8 billion and \$17.4 billion per annum.<sup>138</sup> The Productivity Commission has estimated that workplace mental ill health costs over \$200 billion per annum.<sup>139</sup> While the contribution of job insecurity to these aggregate figures is unclear, there is a strong correlation between higher rates of reported mental ill health (and subjective wellbeing) and job insecurity, typically pronounced for workers in sectors with a greater reliance on non-standard employment.<sup>140</sup>

### 3.5.4 Social connection

[106] Over time, job insecurity may lead to economic hardships, stress and anxiety, and even relationship breakdowns. The absence of fixed workplaces and regular colleagues is said to exacerbate loneliness, isolation and social disconnectedness for insecure workers.<sup>141</sup>

[107] Insecure workers may be excluded from workplace social networks on the basis of their geographic location or physical distance, temporary employment and/or through workplace practices that differentiate non-standard workers from other employees.<sup>142</sup> For example, digital platform employment has been found to increase psychological strain, fatigue and lower wellbeing among employees.<sup>143</sup> Literature reinforces the importance of interpersonal relationships as key to combatting isolation and exclusion.<sup>144</sup>

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<sup>138</sup> Commonwealth of Australia, *Job insecurity report* (Senate Select Committee on Job Security, 2022), p.50 at [3.29].

<sup>139</sup> Productivity Commission, *Mental health inquiry report* Vol 1 (No. 95, Productivity Commission, Canberra, 2020), p.9.

<sup>140</sup> See, eg, Commonwealth of Australia, *Job insecurity report* (Senate Select Committee on Job Security, 2022), pp.50-52; World Health Organisation, [Mental health at work](#) (Web Page, 28 September 2022); Mindy Shoss et al, 'Job insecurity harms both employees and employers' (Harvard Business Review, 26 September 2022); Jose Llosa et al, 'Job insecurity and mental health: a meta-analytical review of the consequences of precarious work in clinical disorders' (2018) 34(2) *Anales de Psicología*, p.211; Serena Yu and Nick Glozier, *Mentally healthy workplaces in NSW: A return-on-investment study* (Safe Work Australia, Sydney, 19 October 2017), p.16; Beyond Blue, Submission to Independent Inquiry into Insecure Work in Australia, December 2011, pp.2-4.

<sup>141</sup> See Commonwealth of Australia, *Job insecurity report* (Senate Select Committee on Job Security, 2022), pp.53-54.

<sup>142</sup> See, eg, International Labour Organisation, *Non-standard employment around the world: Understanding challenges, shaping prospects* (International Labour Office, Geneva, 2016), p.173.

<sup>143</sup> Pallavi Singh et al, 'Enforced remote working: The impact of digital platform-induced stress and remote working experience on technology exhaustion and subjective wellbeing' (2022) 151 *Journal of Business Research*, p.269.

<sup>144</sup> See Commonwealth of Australia, *Job insecurity report* (Senate Select Committee on Job Security, 2022), pp.53-54, 58.





### 3.6 Which employees are said to be most affected?

[108] Evidence suggests that insecure work may exacerbate and/or entrench pre-existing disadvantages and inequalities for certain workers. As observed by Dr Iain Campbell: ‘negative impacts [of non-standard work] are not uniform; [...] workers differ in their exposure to the various insecurities and it is possible that at least some [...] workers may escape the majority of negative impacts.’<sup>145</sup> The most affected workers are those with greater pre-existing social and/or economic barriers.

[109] Women, young people, Aboriginal and Torres Strait Islander peoples, some members of the LGBTQI+ community, new migrants and people with disability routinely report a higher share of insecure employment.<sup>146</sup> However, there is varying evidence affirming the extent of impacts. The categories outlined in this section represent demographic groups and challenges discussed across the identified literature, not an exhaustive list of all affected cohorts.

#### 3.6.1 Women

[110] Women are one cohort frequently identified as overrepresented in non-standard work and more vulnerable to job insecurity overall. The Australian labour market remains highly gendered with women being overrepresented in insecure work, such as casual and fixed term contract employment.<sup>147</sup> The most recent employee survey from the ACTU, for example, found 60 per

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<sup>145</sup> Iain Campbell, ‘On-call and related forms of causal work in New Zealand and Australia’ (Conditions of Work and Employment Series, No. 102, International Labour Office, 2018), p.31.

<sup>146</sup> Commonwealth of Australia, *Job insecurity report* (Senate Select Committee on Job Security, 2022), p.45 at [3.14]; Legislative Assembly Economic and Infrastructure Committee, Parliament of Victoria, *Inquiry into sustainable employment for disadvantaged jobseekers: final report* (2020), p.13; Australian Council of Trade Unions, *Work shouldn’t hurt: the state of work health and safety in Australia 2021* (ACTU D No. 56/2021, Melbourne, 2021), p.19. The gendered dimensions of digital platform work have been the subject of specific research: see, eg, Penny Williams et al, *Gendered dimensions of digital platform work: Review of the literature and new findings* (Centre for Decent Work and Industry, Queensland University of Technology, September 2021); De Silva, Sharon, ‘Gender and work in the gig economy: New ways of working for women in Australia with the same old problems?’ (Masters Thesis, University of Melbourne, 2018).

<sup>147</sup> See, eg, Kathy MacDermott et al, ‘Submission to the Senate Select Committee on Job Security’s Inquiry into the impact of insecure of precarious employment on the economy, wages, social cohesion and workplace rights and conditions’ (National Foundation for Australian Women, 2022), pp.8-15.



cent of insecure workers were women.<sup>148</sup> An exception appears to be on-demand platform work, where men (particularly younger men) participate at higher rates.<sup>149</sup>

[111] The Expert Panel for annual wage reviews noted that as at August 2022, 25 per cent of all female employees were employed on a casual basis, compared with 21 per cent of males. Women working casually were more likely to be working part-time hours than male casual employees.<sup>150</sup> Even with a drop in women's casualisation rates between 1984 and 2022, women remain much more casualised than men.<sup>151</sup> ABS data shows that women report a greater share of other non-standard work compared with men, alongside fewer hours worked per week and a lower overall participation rate.<sup>152</sup>

[112] International literature observes a strong correlation between women's workforce participation and broader cultural, institutional and economic settings.<sup>153</sup> Research from the Organisation for Economic Cooperation and Development and ILO states: 'The gender gap in earnings and the incidence of low pay are partially explained by gender segregation by occupation, with women more crowded into lower paying occupations than men.'<sup>154</sup> This is supported by the Australian Workplace Gender Equality Agency, which highlights the relationship between low remuneration and female-dominated sectors.<sup>155</sup> This gap persists despite traditionally feminised sectors (for example, health care and social assistance and education and training) becoming some of the fastest growing areas and men's share of this work increasing.

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<sup>148</sup> Australian Council of Trade Unions, *Work shouldn't hurt: survey report 2022* (ACTU Centre for Health and Safety, Melbourne, 2022), p.21.

<sup>149</sup> Penny Williams et al, *Gendered dimensions of digital platform work: Review of the literature and new findings* (Centre for Decent Work and Industry, Queensland University of Technology, September 2021), p.5.

<sup>150</sup> *Annual Wage Review Decision 2022-23* [2023] FWCFB 3500 at [146].

<sup>151</sup> Australian Bureau of Statistics, *Working arrangements* (14 December 2022). In the same 1984–2022 period, men saw their share of casual employment increase by 12.3% and total numbers more than double. This demographic shift can be attributed to changing work patterns and industry composition – essentially men moving from more to less secure employment as their participation in service-based industries has grown. Further discussion found in: Geoff Gilfillan, 'Recent and long-term trends in the use of casual employment' (Research Paper Series 2021-22, Parliamentary Library, 24 November 2021), pp.12–13.

<sup>152</sup> See Australian Bureau of Statistics, *Gender indicators* (July 2023).

<sup>153</sup> International Labour Organisation, *Non-standard employment around the world: Understanding challenges, shaping prospects* (International Labour Office, Geneva, 2016), p.124.

<sup>154</sup> Organisation for Economic Cooperation and Development and International Labour Organisation, *Women at work in G20 countries: Progress and policy action* (Paper prepared under Japan's G20 Presidency, International Labour Office, 2019), p.11.

<sup>155</sup> Workplace Gender Equality Agency, *Gender segregation in Australia's workforce* (Factsheet Series, April 2019).



[113] Across the literature, *involuntary* non-standard employment for women is associated with ‘lower hourly wages [...] and fewer training opportunities, which jeopardises women’s chances to obtain better jobs.’<sup>156</sup> Women also face heightened barriers in instances where they have care responsibilities that can bar them from full-time work or where they face complex disadvantage (for example, domestic and family violence), although the availability of non-standard employment may reduce these overall.<sup>157</sup>

[114] Research undertaken for the Commission, published in November 2023, has identified 29 ‘large, highly feminised’ occupations covered by 13 modern awards. These occupations are at least 80 per cent female, employ at least 10,000 people and are located within already highly-feminised industries. Researchers found that in 11 of the 29 feminised categories, women make up more than 90 per cent of the workforce – led by hospital midwives (98.9 per cent female) and preschool teachers (97.6 per cent).<sup>158</sup> Researchers also found a correlation between feminised work and higher rates of part-time and casual employment.<sup>159</sup>

### 3.6.2 Young people

[115] The Senate Select Committee Inquiry into Job Security heard evidence from a broad range of stakeholders concerning issues and impacts for young people, including exploitation, wage underpayments and reduced occupational health and safety (including instances of sexual harassment and verbal abuse).<sup>160</sup> Again, these issues were concentrated among insecure jobs. Research from the Young Workers Centre, for example, found:

- three in four young people were in insecure employment;

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<sup>156</sup> Organisation for Economic Cooperation and Development (OECD) and International Labour Organisation, *Women at work in G20 countries: Progress and policy action* (Paper prepared under Japan’s G20 Presidency, International Labour Office, 2019), p.12.

<sup>157</sup> See Barbara Pocock et al, ‘Work-family and work-life pressures in Australia: advancing gender equality in “good times”’ (2013) 33(9) *International Journal of Sociology and Social Policy*, p.594; Sara Charlesworth, ‘Decent working conditions for care workers? The intersections of employment regulation, the funding market and gender norms’ (2012) 25 *Australian Journal of Labour Law*, p.107; Organisation for Economic Cooperation and Development, *OECD economic surveys: Australia* (October 2023), pp.76–77.

<sup>158</sup> Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, ‘Gender-based occupational segregation: a national data profile’ (Social Policy Research Centre, University of New South Wales, Sydney, 6 November 2023), pp.6-9.

<sup>159</sup> *Ibid*, pp.31, 33–34, 48, 56.

<sup>160</sup> Commonwealth of Australia, *Job insecurity report* (Senate Select Committee on Job Security, 2022), pp.96–99.



- 37 per cent of respondents did not have predictable hours;
- 36.9 per cent were injured at work in the previous 12 months; and
- almost 60 per cent were not getting legal rest breaks.<sup>161</sup>

[116] International literature has also reinforced issues for young people, highlighting that youth labour markets are increasingly insecure, entrenching insecure jobs among young people and hindering their career mobility.<sup>162</sup>

### 3.6.3 New migrants and culturally diverse workers

[117] New migrants and people from culturally diverse communities face distinct employment barriers. As a result, these workers remain overrepresented in insecure work. As summarised in the Lives on Hold report: 'Workers from culturally and linguistically diverse (CALD) backgrounds are . . . particularly vulnerable to finding themselves trapped in insecure work. This can result from social isolation, low English literacy, discrimination in the workplace and a lack of education and information about rights and entitlements at work in languages other than English.'<sup>163</sup> The experiences of CALD workers, however, are not uniform and depend on:

- length of time spent in Australia;
- English-language proficiency;
- insecure work status;
- concerns about career progression or place in community;
- not understanding their rights or where to go for help;
- levels of trust/distrust towards government; and
- visa or migration status.<sup>164</sup>

[118] In 2017-18 migrant workers were estimated to comprise 6 per cent of the Australian workforce.<sup>165</sup> Research from the Migrant Workers' Centre contends that 'some jobs, particularly

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<sup>161</sup> Young Workers Centre, *A broken system: how insecure work hurts young workers* (July 2021).

<sup>162</sup> See, eg, Agnieszka Rydzik and Matthijs Bal, 'The age of insecuritisation: Insecure young workers in insecure jobs facing and insecure future' (2023) *Human Resource Management*, p.1.

<sup>163</sup> Brian Howe et al, 'Lives on hold: unlocking the potential of the Australian Workforce' (Report of the Independent Inquiry into Insecure Work, Australian Council of Trade Unions, 2012), p.23.

<sup>164</sup> See Respect@Work, Culturally and linguistically diverse <<https://www.respectatwork.gov.au/culturally-and-linguistically-diverse>> accessed November 2023.

<sup>165</sup> Commonwealth of Australia, *Report of the migrant workers' taskforce* (Migrant Workers' Taskforce, 2019), pp.34-35.



exploitative and insecure jobs, are readily available to migrant workers whereas decent jobs are inaccessible.<sup>166</sup> Access to better paid and more secure jobs is often limited by discriminatory recruitment practices and barriers within the migration system itself that, effectively, concentrate migrants in less secure forms of work. According to previous research, as many as 50 per cent of migrant workers may be underpaid.<sup>167</sup>

[119] The Senate Inquiry heard extensive evidence of migrant worker exploitation, finding that this exploitation had been enabled by ‘deeply precarious working arrangements.’<sup>168</sup> Employee representatives, like the United Workers Union, submitted to the Senate Inquiry that the exploitation of migrant workers was due to the ‘power asymmetry’ inherent in insecure and casual work.<sup>169</sup> Other barriers for migrant workers include discriminatory attitudes or racism, structural challenges in the migration system and higher barriers to participating in certain kinds of work, concentrating new migrants in insecure jobs.<sup>170</sup>

[120] The Migrant Workers’ Centre highlights that there is a correlation between temporary migration status, insecure employment and experiences of wage theft.<sup>171</sup> Migrant workers report significant rates of discrimination, bullying and verbal abuse. Job insecurity was also strongly correlated with ‘feeling unsafe’, with 59 per cent of migrant workers in precarious employment reporting feeling unsafe in their jobs.<sup>172</sup>

[121] Migrant workers are significantly more likely to participate in digital platform work. A 2019 national study found: ‘Relative to Australian citizens, temporary residents are three times more

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<sup>166</sup> Migrant Workers’ Centre, ‘Insecure by design: Australia’s migration system and migrant workers’ job market experiences’ (Migrant Workers Centre, Melbourne, 2023), p.6.

<sup>167</sup> Laurie Berg and Bassina Farbenblum, ‘Wage theft in Australia: Findings of the National Temporary Migrant Work Survey’ (Sydney University and University of Technology Sydney, 2017).

<sup>168</sup> Commonwealth of Australia, *Job insecurity report* (Senate Select Committee on Job Security, 2022), p.95 (citations omitted).

<sup>169</sup> *Ibid.*

<sup>170</sup> Agnieszka Kosny et al, ‘Employment in a ‘land of opportunity?’: Immigrants’ experiences of racism and discrimination in the Australian workplace’ (2017) 18(2) *Journal of International Migration and Integration*, pp.483–497; Vassilissa Carangio et al, ‘Racism and White privilege: highly skilled immigrant women workers in Australia’ (2021) 44(1) *Ethnic and Racial Studies* pp.77–96; Migrant Workers’ Centre, ‘Insecure by design: Australia’s migration system and migrant workers’ job market experiences’ (Migrant Workers Centre, Melbourne, 2023), pp.33–37.

<sup>171</sup> *Ibid.*

<sup>172</sup> *Ibid.*, p.40.



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likely to be a current platform worker and twice as likely to have been a former platform worker. Permanent residents are 1.7 times more likely than Australian citizens to be current or former platform workers.<sup>173</sup> Similar findings were reported for CALD workers.

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<sup>173</sup> Paula McDonald, et al, *Digital platform work in Australia: preliminary findings from a national survey* (Queensland University of Technology, University of Adelaide and University of Technology Sydney, 18 June 2019), p.3. The study also found students, the unemployed, people with disability and Aboriginal and Torres Strait Islander peoples to have higher participation rates.



## 4. Analysis of minimum entitlements and employment conditions in modern awards

This chapter provides an analysis of award provisions relevant to job security found in the seven most commonly used modern awards and examines the standard clauses found within all modern awards.

### 4.1 Analysis of the seven most commonly used awards

[122] As noted in the section 2.1, the Expert Panel in the *AWR 2022-23 Decision* stated that the award provisions likely to be most pertinent in respect of promoting regularity and predictability in hours of work and income and restricting the capacity of employers to terminate employment at will, are those concerned with:

- the types of employment (full-time, part-time, casual or other);
- rostering arrangements;
- minimum hours of work per day and per week;
- the payment of weekly or monthly rather than hourly wages; and
- notice of termination of employment and redundancy pay.<sup>174</sup>

[123] This section presents a discussion and comparative analysis of these provision in the seven most-commonly used awards. The seven awards were identified in ABS EEH microdata as awards where there is the highest level of award reliant employees (those paid at the rate specified in the award).<sup>175</sup> The following awards account for more than half (53 per cent) of all award reliant employees:

- *Children's Services Award 2010* [[MA000120](#)] (Children's Award)
- *Clerks—Private Sector Award 2020* [[MA000002](#)] (Clerks Award)
- *Fast Food Industry Award 2020* [[MA000003](#)] (Fast Food Award)
- *General Retail Industry Award 2020* [[MA000004](#)] (Retail Award)
- *Hospitality Industry (General) Award 2020* [[MA000009](#)] (Hospitality Award)

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<sup>174</sup> [2023] FWCFB 3500 at [28].

<sup>175</sup> Fair Work Commission, *A profile of employee characteristics across modern awards*, Research Report 1/2023 (March 2023).



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- *Restaurant Industry Award 2020* [[MA000119](#)] (Restaurant Award)
- *Social, Community, Home Care and Disability Services Industry Award 2010* [[MA000100](#)] (SCHADS Award)

[124] The provisions identified in the analysis are indicative only of the types of award terms that may impact job security. The section poses questions to interested parties on these provisions' relationship to job security to prompt critical consideration as to whether they appropriately reflect the new objectives; however, it will not propose any changes to the provisions.

### 4.1.1 Types of employment

[125] Modern awards typically provide for three main types of employment: full-time employment and part-time employment, together termed 'permanent employment',<sup>176</sup> and casual employment. This typology can be traced to the *1997 Award Simplification Decision* of the Australian Industrial Relations Commission (AIRC) Full Bench, which re-categorised employment for most awards into these three categories.<sup>177</sup>

[126] The meaning of the expression 'types of employment' received comprehensive examination in *Re Metal, Engineering and Associated Industries Award, 1998 - Part 1* ('*Metals Casuals Decision*'). There, the Full Bench of the AIRC observed:

"Types of employment provided for in an award are foundational to the award's regime, and therefore to the award safety net. The expressions "categories of employment" and "types of employment" in industrial jargon refer to types of contract of employment. A type of employment specified in an award is the subject to which the terms and conditions for that type of employment are awarded. Usually an award applies to one or more main or primary types of employment; each other type, in concept at least, is exempt from some or all of the conditions awarded to apply to the primary category or categories."<sup>178</sup>

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<sup>176</sup> The Full Bench in *4 yearly review of modern awards – Casual employment and Part-time employment* [[2017](#)] FWCFB 3541 stated that although 'permanent employment' is a misnomer, it is a well-established expression used to describe employment, either full-time or part-time, that is not casual and is only terminable on notice except in circumstances where summary dismissal is justified.

<sup>177</sup> [1997] 75 IR 272; Print P7500 at [10].

<sup>178</sup> [[2000](#)] AIRC 722 at [9].





[127] This highlights that the terms and conditions attaching to a particular type of employment serve to determine the nature of the safety net by forming the criteria for excluding some or all modern award entitlements. This is particularly true in the case of casual work, which is excluded from many entitlements, rendering it particularly susceptible to job insecurity.

[128] The Full Bench in the *Metals Casuals Decision* noted that, in the award under consideration – the *Metal, Engineering and Associated Industries Award 1998*, full-time employment was the primary type of employment, and stated that:

“Each other type of employment may be seen as a response to operational, employment market, or perhaps special case needs. Those needs have been met by making provision as the need arose for the extra type of employment contract to which specific exemptions or peculiar conditions were then awarded. The reasons for having a category of employment should be distinguished from the reasons for awarding exemptions or differential conditions to apply to the supplementary category. Aspects of the use later made of a category in the industry can also be distinguished from each of those reasons.”<sup>179</sup>

[129] This analysis may suggest that casual and part-time employment categories provided for in an award are first to be justified by reference to the needs within the labour market which they are intended to address. Once this justification is established, the extent of the exemptions or differential conditions that are to apply to these categories must themselves be justified.

[130] Staff of the Commission produced research for the Annual Wage Review 2022-23, using microdata from the 2021 ABS Survey of Employee Earnings and Hours (EEH) that details the breakdown of employment type in the seven awards (reproduced below). The EEH is a biennial survey that collects information on businesses and employees, including 95 per cent of modern award-reliant employees.<sup>180</sup>:

**Table 1A—Proportions by employment type, 2021**

	Casual (%)	Permanent/fixed-term (%)
Children’s Award	27.1	72.9

<sup>179</sup> *Re Metal, Engineering and Associated Industries Award, 1998 - Part 1* [2000] AIRC 722 at [9].

<sup>180</sup> Kelvin Yuen and Josh Tomlinson, ‘A profile of employee characteristics across modern awards’ (Fair Work Commission, Research report 1/2023, March 2023), p.58.



**Table 1A—Proportions by employment type, 2021**

	Casual (%)	Permanent/fixed-term (%)
Clerks Award	39.0	61.0
Retail Award	67.0	33.0
Hospitality Award	71.5	28.5
Fast Food Award	70.6	29.4
Restaurant Award	68.8	31.2
SCHADS Award	45.1	54.9

Source: Kelvin Yuen and Josh Tomlinson, 'A profile of employee characteristics across modern awards' (Fair Work Commission, Research report 1/2023, March 2023) Table B4; ABS, *Microdata: Employee Earnings and Hours, Australia, May 2021*.

**Table 1B—Proportions by full-time/part-time status, 2021**

	Full time (%)	Part-time (%)
Children's Award	38.4	61.6
Clerks Award	53.1	46.9
Retail Award	21.8	78.2
Hospitality Award	18.3	81.7
Fast Food Award	14.0	86.0
Restaurant Award	20.5	79.5
SCHADS Award	28.8	71.2

Source: Kelvin Yuen and Josh Tomlinson, 'A profile of employee characteristics across modern awards' (Fair Work Commission, Research report 1/2023, March 2023) Table B3; ABS, *Microdata: Employee Earnings and Hours, Australia, May 2021*.



- [131] All seven awards provide that employees are to be employed in one of the three main types of employment.<sup>181</sup>
- [132] Table 2 provides a comparison of the award provisions relation to employment types in the seven awards. Full-time work is defined consistently across all awards, noting exceptions for sectors with variable hours or to account for rostering arrangements. There are greater variations in part-time and casual employment provisions, although part-time work must provide ‘reasonably predictable’ hours as agreed between employers and employees.
- [133] Part-time employees under the Hospitality Award and Restaurant Award are guaranteed a minimum of eight hours per week, which is not specified in any of the other five in-scope awards (although minimum engagement periods are, see Table 6 below). Guaranteed hours and employee availabilities are generally agreed at commencement. As phrased, ordinary hours are capable of being changed with minimum employee consultation (as discussed below).

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<sup>181</sup> Children’s Award, cl 10.1; Clerks Award, cl 8.1; Fast Food Award, cl 8.1; Retail Award, cl 8.1; Hospitality Award, cl 8.1; Restaurant Award, cl 8.1; SCHADS Award, cl 10.1.



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**Table 2—Comparison of employment type provisions**

	<u>Children's Services Award</u>	<u>Clerks Award</u>	<u>Fast Food Award</u>	<u>Retail Award</u>	<u>Hospitality Award</u>	<u>Restaurant Award</u>	<u>SCHADS Award</u>
<b>Full-time employment</b>	Average of 38 ordinary hours per week <b>cl 10.3</b>	38 ordinary hours per week OR fewer than 38 ordinary hours per week as considered full-time by employer <b>cl 9.1(a)–(b)</b>	Average of 38 ordinary hours per week over 4 weeks (max) <b>cl 9</b>	Average of 38 ordinary hours per week in accordance with agreed hours <b>cl 9</b>	Average of 38 ordinary hours per week (as set out in cl 15.1) <b>cl 9</b>	<b>cl 9</b> identical to Fast Food Award	38 ordinary hours per week OR average of 38 hours per week. <b>cl 10.2</b>
<b>Part-time employment</b>	Less than full-time hours (38 per week)	Fewer than 38 ordinary hours per week (or number mentioned in cl 9.1(b) on reasonably predictable basis <b>cl 10.1</b>	Less than 38 ordinary hours per week <b>cl 10.1</b>	Fewer than 38 ordinary hours per week <b>cl 10.1</b>	At least 8 and fewer than 38 ordinary hours per week OR, if employer operates roster, an average of at least 8 and fewer than 38 hours per week over roster cycle <b>cl 10.2</b>	<b>cl 10.2</b> identical to Hospitality Award	Less than 38 hours per week OR average of less than 38 hours per week
	Reasonably predictable hours of work <b>cl 10.4(b)</b>	Hours of work on a reasonably predictable basis <b>cl 10.1</b>	<b>cl 10.1</b> identical to Children's Services Award provision	<b>cl 10.1</b> identical to Children's Services Award provision	<b>cl 10.2</b> identical to Children's Services Award provision	<b>cl 10.2</b> identical to Children's Services Award provision	<b>cl 10.3</b> identical to Children's Services Award provision



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	<u>Children's Services Award</u>	<u>Clerks Award</u>	<u>Fast Food Award</u>	<u>Retail Award</u>	<u>Hospitality Award</u>	<u>Restaurant Award</u>	<u>SCHADS Award</u>
	Regular pattern of work must be agreed in writing at engagement, specifying hours per day; days of work and start/finish times (at min) <b>cl 10.4(c)</b>	Number of hours of work, days of work, and start and finish times must be agreed in writing at engagement <b>cl 10.2</b>	Regular pattern of work must be agreed in writing at engagement.  Agreement must include: hours per day; days of work; start/finish times; when meal breaks may be taken and duration; daily min. engagement (as per cl 10.2); variation will be in writing <b>cl 10.3</b>	Number of hours of work, days of work, start and finish times, and meal breaks must be agreed in writing at engagement <b>cl 10.5(a)–(c)</b>	Number of hours of work each week (or roster cycle) and employee's availability must be agreed in writing at engagement <b>cl 10.4</b>	<b>cl 10.4</b> identical to Hospitality Award	Regular pattern of work, incl number of hours of work, days of work, start/finish times, to be agreed in writing before commencement <b>cl 10.3(c)</b>
<b>Casual employment</b>	Hourly rate for full-time employee (as per cl 14) plus 25% casual loading for each ordinary hour	25% loading on top of min hourly rate otherwise applicable under cl 16 <b>cl. 11.1</b>	No more than 38 ordinary hours per week OR where rostered, no more than 38 ordinary hours per week averaged over roster cycle. <b>cl 11.1</b>	25% loading on top of min hourly rate provided by cl 17 <b>cl 11.1</b>	25% loading in addition to ordinary hourly rate <b>cl 11.1</b>	25% loading in addition to ordinary hourly rate provided by cl 18 <b>cl. 11.1</b>	Paid per hour calculated at the rate of 1/38th of the weekly rate appropriate to classification



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	<u>Children's Services Award</u>	<u>Clerks Award</u>	<u>Fast Food Award</u>	<u>Retail Award</u>	<u>Hospitality Award</u>	<u>Restaurant Award</u>	<u>SCHADS Award</u>
	May be engaged only for temporary and relief purposes <b>cl 10.5(a)-(b)</b>		Min hourly rate as per cl 15 plus 25% loading <b>cl. 11.1-2</b>		Max 12 hours per day or per shift OR max 38 hours per week or, if roster, average of 38 hours per week over roster cycle (not exceeding 4 weeks) <b>cl 11.2</b>	<b>cl 11.2</b> identical to Hospitality Award	Loading of 25% in addition to above hourly rate <b>cl 10.4</b>



## Casual employment

[134] From the early 20th century casual employment emerged as a recognised feature of the Australian industrial relations system.<sup>182</sup> Historically, industrial tribunals distinguished casual or hourly hire employment from weekly or daily hire employment by reference to the nature of the employment under consideration. The regulatory features of casual employment thus developed in close connection with the demand for irregular and intermittent work subject to external fluctuations in consumer demand and operational requirements.

[135] At times, different awards have contained restrictions on the work functions casual employees could perform<sup>183</sup> and restrictions on the period for which they could be engaged.<sup>184</sup> More recently, the award modernisation process involved a substantial consolidation of the provisions of pre-existing federal and State awards. However, as observed by the Full Bench in the *4 yearly review of modern awards – Casual employment and Part-time Employment Decision*:

“[The award modernisation] process did not involve any re-analysis of the conceptual underpinnings of casual employment. With a small number of exceptions, modern awards continued the approach established in the Award Simplification Decision and confirmed in the *Metals Casuals Decision* of making provision for the 3 categories of full-time, part-time and casual employment, with casual employment provisions typically applying to employees engaged and paid on a casual basis. The AIRC Full Bench which carried out the process appears to have proceeded on the assumption that a casual under a modern award would also be a casual for the purposes of the NES provisions of the FW Act [...]. The Full Bench also standardised the casual loading at 25%, consistent with the *Metals Casuals Decision*.”<sup>185</sup>

(citations omitted)

[136] The *4 yearly review casuals and part-time decision*, provides an overview of the history and nature of both casual and part-time employment.<sup>186</sup> The Full Bench there noted the relevance of the *Metals Casuals Decision* to the conceptual development of casual employment provisions in

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<sup>182</sup> *4 yearly review of modern awards – Casual employment and Part-time employment* [2017] FWCFB 3541 at [16].

<sup>183</sup> See *Professional Divers’ – Maritime Union of Australia Award 2022* at cl 13.3.1.

<sup>184</sup> See e.g., *Mobile Crane Hiring Award 2002* at cl 9.4.2; *Plumbing Industry (QLD and WA) Award 1999* at cl 9.3.2.

<sup>185</sup> [2017] FWCFB 3541 at [71].

<sup>186</sup> *Ibid* at [15]-[97].



federal awards. In that decision, a Full Bench of the AIRC described three ‘manifest incidents’ of casual employment under the then *Metal, Engineering and Associated Industries Award 1998* as:

- The employee must be specifically engaged as a casual employee;
- that employment is by the hour; and
- that ordinary time work is paid at one thirty eighth of the weekly rate prescribed for the classification plus a casual loading of 20% forming part of the *all purpose rate*.<sup>187</sup>

[137] The 4 *yearly review casuals and part-time decision*, discussed this approach:

“[42]...The Full Bench said that employment by the hour, which connoted a contract of employment based on “hourly hire”, was “the most important and most distinctive” incident of casual employment under the award, but found that in practice the position was somewhat different:

‘[58] The evidence suggests that casual employment in the metals and manufacturing industry, in practice, is only infrequently by engagement that is a true hiring by the hour. It seems casual employment is often a continuing employment, until the need arises to interrupt or terminate it. It seems likely that, in such circumstances, the employment is terminated at will or on short notice, or is treated as expired if not renewed.’

[43] The Full Bench elsewhere described hourly employment under the award as likely to “have become a fiction for all purposes other than having the employment relationship expire at the will of the employer, or on abbreviated notice”. As to the circumstances in which casual employment under the award could be used, the Full Bench said:

‘[92] The Award now imposes no restriction on the circumstances in which a casual may be engaged, provided the employee is engaged as such. The history of award provisions for weekly hire and contract of employment in the industry does not support the submission made by the AMWU that the meaning of the word “casual” under the award should now be given a meaning associated with only irregular or occasional work. The gradual broadening of the function of the clause militates against the argument. Moreover, for the reasons we have indicated, we are unable to accept that it is sound in principle to attempt to distil from the circumstances in

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<sup>187</sup> *Re Metal, Engineering and Associated Industries Award, 1998 - Part 1* [2000] AIRC 722 at [11].





which a type of employment may have been used the determinants and incidents of the type of employment itself.”<sup>188</sup>

[138] Relevantly, the *Metals Casual Decision* also stated that:

- The notion of permanent casual employment, if not a contradiction in terms, detracts from the integrity of an award safety net in which standards for annual leave, paid public holidays, sick leave and personal leave are fundamentals.<sup>189</sup>
- Casual employment should not be a cheaper form of labour, nor should it be made more expensive than the main counterpart types of employment.<sup>190</sup>

[139] The conceptual underpinnings of casual employment set out in the *Metals Casuals Decision*, with a small number of exceptions, continued as the approach taken towards casual employment in modern awards.<sup>191</sup> As part of award modernisation, the AIRC also standardised the casual loading at 25 per cent, consistent with the *Metals Casuals Decision*.

[140] Despite its early recognition as a category of employment, arriving at a precise and uncontested definition of casual employment at common law proved elusive for over a century. Prior to the introduction of the statutory definition, the Full Federal Court judgments in *WorkPac Pty Ltd v Skene*<sup>192</sup> and *WorkPac Pty Ltd v Rossato* had established that casual employment is typified by the absence of a firm advance commitment from an employer to continuing and indefinite work according to an agreed pattern of work.<sup>193</sup>

[141] On 26 March 2021, the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021* introduced a definition of ‘casual employee’ at s 15A of the FW Act. The inclusion of the statutory definition now establishes that the defining characteristic of casual employment is

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<sup>188</sup> 4 yearly review of modern awards – *Casual employment and Part-time employment* [2017] FWCFB 3541 at [42]-[43].

<sup>189</sup> *Re Metal, Engineering and Associated Industries Award, 1998 - Part 1* [2000] AIRC 722 at [106].

<sup>190</sup> *Ibid* at [157] and [196].

<sup>191</sup> 4 yearly review of modern awards – *Casual employment and Part-time employment* [2017] FWCFB 3541 at [71].

<sup>192</sup> [2018] FCAFC 131.

<sup>193</sup> [2020] FCAFC 84 at [31].



the absence of a 'firm advance commitment to continuing and indefinite work according to an agreed pattern' reflecting *WorkPac Pty Ltd v Skene*<sup>194</sup> and *WorkPac Pty Ltd v Rossato*.<sup>195</sup>

[142] Section 15A of the FW Act defines a person as a casual employee if the person:

- is offered employment on the basis that the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work;
- accepts the offer on that basis; and
- is an employee as a result of that acceptance.

[143] In determining whether an employer makes no 'firm advance commitment', regard may only be had to the following considerations:

- whether the employer can elect to offer the employee work and whether the employee can elect to accept or reject work;
- whether the person will work as required according to the needs of the employer;
- whether the employment is described as casual employment;
- whether the person will be entitled to a casual loading or a specific rate of pay for casual employees.<sup>196</sup>

[144] In contrast to full-time and part-time employees, casual employees are not entitled to the full range of rights provided by the NES. The NES specifically excludes casual employees from the entitlements to:

- annual leave (s 86);
- paid personal/carer's leave (s 95);
- paid compassionate leave (s 106);
- paid jury service leave (s 111(1)(b));
- payment for absence on a public holiday (s 116);
- notice of termination and redundancy pay (s 123(1)(c)).

[145] Casual employees are also excluded from making requests for flexible working arrangements and from the unpaid parental leave provided by the NES unless they are a 'regular casual employee',

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<sup>194</sup> [2018] FCAFC 131.

<sup>195</sup> [Revised Explanatory Memorandum](#), Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 (Cth), p.3.

<sup>196</sup> *Fair Work Act 2009* (Cth) s.15A(2).



defined by the FW Act as a casual employee employed on a 'regular and systematic basis',<sup>197</sup> and have a reasonable expectation of continuing employment on that basis (ss 65(2)(b) and 67(2)).

[146] In addition to these NES exclusions, casual employees may be effectively excluded from protection from unfair dismissal, as their periods of service will not count towards the minimum employment period unless they are employed on a 'regular and systematic basis' and have a reasonable expectation of continuing employment on that basis (s 384(2)). Casual employees are also excluded from certain notification requirements regarding dismissals (ss 524(1) and 789(1)).

[147] After analysis of the then principal cases examining the nature of casual employment, undertaken prior to the insertion of the statutory definition of casual employee, the *4 yearly review casuals and part-time decision* concluded that:

"[85] . . . beyond the basic proposition that a casual employee will almost always be an employee engaged and paid as such, it is difficult to assign any consistent legal or practical criteria to the concept of casual employment. From a contractual perspective, a casual employee may be engaged under a succession of hourly or daily fixed-term contracts, or under a succession of fixed term contracts for a longer period, or under a single ongoing contract with no fixed term but terminable at short notice. In practical terms, casual employment may be used for the performance of short-term, intermittent and irregular work at one end of the range, but at the other end it may be used for long term work with regular, rostered hours. In respect of the modern award context with which we are concerned, casual employment has under most modern awards evolved into an alternative payment and entitlement system available at the election of the employer upon engagement (subject to the operation of any casual conversion provision which may currently exist in the modern award)."<sup>198</sup>

### **Casual loading**

[148] Under modern awards, casual employees are paid a casual loading of 25 per cent. The casual loading has been a longstanding feature of casual employment in Australia. Historically, a loading was paid to compensate both for rights and leave entitlements not afforded to casual employees, and for the indeterminate duration of casual employment.

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<sup>197</sup> *Fair Work Act 2009* (Cth) s 12 'Regular casual employee'.

<sup>198</sup> *4 yearly review of modern awards – Casual employment and Part-time employment* [2017] FWCFB 3541 at [85].



[149] In the *Metals Casuals Decision*, the AIRC determined that the rationale for the casual loading and calculation of its components should reflect the safety net of benefits applicable to full-time employees, noting that the safety net of benefits could not be precisely quantified. The Full Bench of the AIRC held that the main components to be assessed in determining casual loading for the Metal, Engineering and Associated Industries Award 1998 were:

- paid leave;
- long service leave;
- differential entitlement to notice of termination;
- employment by the hour effects.<sup>199</sup>

[150] In its 2008 Award Modernisation decision, the AIRC Full Bench standardised the casual loading at 25 per cent, consistent with the *Metals Casuals Decision*. The Full Bench considered that the 25 per cent loading was sufficiently common to qualify as a minimum standard and that it included compensation for annual leave but did not address the proportionate value of its components. The AIRC was clear the loading will compensate for annual leave and there will be no additional payment in that respect.<sup>200</sup>

[151] The judgment in *WorkPac Pty Ltd v Rossato* appeared to prevent employers from offsetting their liability for unpaid leave entitlements against any casual loading already paid to misclassified employees.<sup>201</sup> This led to accusations that employees being paid a casual loading and the entitlements of a permanent employee were 'double-dipping'.<sup>202</sup>

[152] In March 2021, the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021 (Cth)* introduced a statutory 'offset mechanism'.<sup>203</sup> The offset mechanism directs courts to 'reduce any amounts payable by the employer for relevant entitlements against casual loading amounts paid to the person'.<sup>204</sup>

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<sup>199</sup> *Re Metal, Engineering and Associated Industries Award, 1998 - Part 1* [2000] AIRC 722 at [196].

<sup>200</sup> *Award Modernisation* [2008] AIRCFB 1000 at [50].

<sup>201</sup> [2020] FCAFC 84 at [947]-[949].

<sup>202</sup> Report to Senate Education and Employment Legislation Committee: Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 (Cth), at [3.64]-[3.66].

<sup>203</sup> See *Fair Work Act 2009 (Cth)* s 545A.

<sup>204</sup> Explanatory Memorandum, Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 (Cth), p.18 at [88].



[153] The mechanism outlines relevant entitlements as:

- annual leave;
- personal/carer's leave;
- compassionate leave;
- payment for absence on a public holiday;
- payment in lieu of notice of termination; and
- redundancy pay.<sup>205</sup>

[154] The offset mechanism reflects the assumption that a casual employee under an award is paid the casual loading in lieu of these entitlements.

[155] The interaction between the casual loading and overtime loadings in modern awards was examined by the Commission in the *4 yearly review Overtime for casuals* matter (AM2017/51).<sup>206</sup> In that matter, the nature of the interaction was specific to the individual award concerned. In most awards, it was determined that the casual and overtime loadings were to compound.

[156] The interaction between the casual loading and penalty rates for weekend and public holidays was considered in the *4 yearly review Penalty rates* matter (AM2014/305). The Productivity Commission had recommended that the casual loading was applied to penalty rates in the same way across awards:

“For neutrality of treatment, the casual loading should be *added* to the penalty rate of a permanent employee when calculating the premium rate of pay over the basic wage rate for weekend work. This would make an employer indifferent, at the margin, between hiring a permanent employee over a casual employee. It would also be consistent with the desirability of ‘equal pay for equal’ work.”<sup>207</sup>

[157] In the context of the Hospitality and Retail Awards, the Full Bench agreed with the ‘default’ approach’ advocated by the Productivity Commission that the casual loading be added to the penalty rate for weekend and public holidays to ensure that the rate of pay for a casual employee

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<sup>205</sup> *Fair Work Act 2009* (Cth) s 545A(4).

<sup>206</sup> See *4 yearly review of modern awards – Overtime for casuals* [2019] FWCFB 6953, [2020] FWCFB 4350 and [2020] FWCFB 5636.

<sup>207</sup> Productivity Commission, [Inquiry report - Workplace Relations Framework](#), Volume 1, 30 November 2015, p.496.



is always 25 percentage points above the rate of pay for non-casual employees.<sup>208</sup>The Full Bench stated:

“Casual loadings and weekend penalty rates are separate and distinct forms of compensation for different disabilities. Penalty rates compensate for the disability (or disutility) associated with the time at which work is performed.”<sup>209</sup>

### **Casual conversion**

[158] The *4 yearly review casuals and part-time decision* during the 4 yearly review of modern awards provides a history of casual conversion provisions. In that decision, the Full Bench noted that the initial development of casual conversion clauses in Federal, South Australian, and New South Wales jurisdictions emerged in response to the engagement of casual employees in regular and systematic work over extended periods of time.

[159] The fundamental justification for the introduction of casual conversion provisions was that the engagement of casual employees over such long periods undermined the integrity of employment standards, including the entitlement to annual leave, public holidays, sick and personal leave, as well as other detriments including lack of access to training and career development and difficulty obtaining finance from financial institutions.<sup>210</sup>

[160] Casual conversion entitlements were first introduced into the FW Act in 2021 as part of the *Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Act 2021 (Cth)*, having previously only been present in modern awards.<sup>211</sup> Conversion provides a pathway into permanent employment for eligible casual employees. One independent review of the FW Act amendments stated that:

“the casual conversion mechanism may be of the greatest importance to casual employees experiencing financial uncertainty. In an environment where cost-of-living pressures are

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<sup>208</sup> *4 yearly review of modern awards – Penalty Rates* [2017] FWCFB 1001 at [1979].

<sup>209</sup> *Ibid* at [891].

<sup>210</sup> *4 yearly review of modern awards – Casual employment and Part-time employment* [2017] FWCFB 3541 at [346].

<sup>211</sup> *Ibid* at [369].



increasing, casual employees experiencing high levels of financial stress are more likely to want to convert to a permanent role to improve their level of financial stability.”<sup>212</sup>

[161] Currently under the NES, a casual employee within the meaning of s 15A of the FW Act is eligible to request casual conversion if they have worked for their employer for 12 months or longer and, in the 6-month period ending on the day the request is given, with a ‘regular pattern of hours . . . without significant adjustment’.<sup>213</sup> The Commission examined what constitutes a regular pattern of work during the reference period for the purposes of casual conversion in *Sacchetta v GrainCorp Limited*.<sup>214</sup> Notwithstanding protections in s 66L,<sup>215</sup> employers have grounds for refusing conversion requests, including anticipated change in an employee’s hours, days, and/or times of work.<sup>216</sup> Data analysis of casual conversion suggests that rates of utilisation remain very low and<sup>217</sup> administering the mechanism may be subject to a number of unintended consequences. A review of the operation of casual conversion provisions found that the mechanism does not accommodate some casual employees engaged through labour-hire arrangements, or sequential short-term contracts as they cannot meet the 12 months minimum period of engagement.<sup>218</sup>

[162] In its decision that a casual conversion clause was necessary to include in all modern awards, the Full Bench in the *4 yearly review casuals and part-time decision* considered the extent to which the casual loading can justify the exclusion of the NES entitlements. They concluded that while it was ‘not necessary to impose any drastic constraint on the use of casual employment at the point of engagement’ a casual conversion mechanism was nonetheless required to ensure that the NES element of the safety net (the other component being the modern awards) was not rendered

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<sup>212</sup> See Philip Jones-Hope and Jennifer Wilson, ‘Review of the Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Act 2021 (Cth)’ (KPMG, 11 October 2022), p.2.

<sup>213</sup> *Fair Work Act 2009* (Cth) s 66F(1).

<sup>214</sup> *Sacchetta v GrainCorp Limited* [2022] FWC 2339 at [31]-[36].

<sup>215</sup> See, e.g., *Toor v Cleanaway Operations Pty Ltd* [2022] FWC 1900 where the Commission found that that the applicant was unfairly dismissed on the basis they were dismissed to avoid converting their employment from casual to permanent.

<sup>216</sup> *Fair Work Act 2009* (Cth) s 66C(2)(a)-(d).

<sup>217</sup> Australian Bureau of Statistics, *Technical Data Report: Analysis of changes in casual conversion in Australia* (Report, July 2022), p.2.; see also Philip Jones-Hope and Jennifer Wilson, ‘Review of the Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Act 2021 (Cth)’ (KPMG, 11 October 2022), pp.65-66.

<sup>218</sup> Philip Jones-Hope and Jennifer Wilson, ‘Review of the Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Act 2021 (Cth)’ (KPMG, 11 October 2022), pp.6. 46-48.



irrelevant for certain long-term casual employees who wished to convert to permanent employment:

“[366]. . . Although the casual loading for which modern awards provide notionally compensates for the financial benefits of those NES entitlements which are not applicable to casuals, this does not take into account the detriments which the evidence has demonstrated may attach to the absence of such benefits, particularly for adult long-term casuals who are financially dependent on their casual employment. These include, as earlier stated, attending work while sick and not taking recreational leave because of concerns about whether any absence from work will endanger future employment, the incapacity to properly balance work and attending to personal and caring responsibilities and commitments, changes in working hours without notice, and potential for the sudden loss of what had been regular work without any proper notice or adjustment payment. Additionally, as we have found, there are other detriments associated with casual employment of this nature, including the lack of a career path, diminished access to training and workplace participation, poorer health and safety outcomes and the inability to obtain loans from financial institutions.

[367] Because, under most modern awards, the applicability of most NES entitlements depends on whether the employer chooses to engage and pay an employee as a casual, the employer notionally has the capacity to deny NES entitlements to anybody it employs, regardless of the incidents of the employment. There is no constraint on the employer choosing to engage as casuals persons who equally might readily be engaged as permanent full-time or part-time employees under the terms of the modern award. The lack of any such constraint creates the potential to render the NES irrelevant to a significant proportion of the workforce. Such a result is difficult to reconcile with that part of the object in s.3(b) of the FW Act which refers to “ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders”, and s.61 which provides (in relation to Part 2-2, *The National Employment Standards*) “This Part sets minimum standards that apply to the employment of employees which cannot be displaced, even if an enterprise agreement includes terms of the kind referred to in subsection 55(5)”.





[368] The evidence before us does not suggest that employers generally have exploited this potentiality to render the NES irrelevant on a widespread scale. The level of casual employment has not significantly changed since the enactment of the FW Act, and most employers recognise that the maximisation of permanent employment as far as practicable is desirable in order to maintain a dependable and motivated workforce. That means that it is not necessary to impose any drastic constraint on the use of casual employment at the point of engagement, and in any event as stated no party has applied for an award variation of that nature. However the evidence does demonstrate that some employers do engage indefinitely as casuals persons who under the relevant award provisions may be, and want to be, employed permanently, with the result that the NES does not form part of the safety net as it applies to them and is rendered irrelevant. In order to ensure that the modern awards objective is met with respect to such persons – that is, to ensure that the safety net including its NES component remains fair and relevant to them – we consider that it is necessary for modern awards containing unrestricted casual employment provisions to contain a mechanism by which casuals employees who bear the 3 characteristics earlier identified may convert to permanent employment.<sup>219</sup>

### Part-time employment

[163] The Full Bench in the *4 yearly review of modern awards – Casual employment and Part-time Employment decision* observed that, while differing in hours worked per week (or roster cycle), part-time employment ‘is usually conceived as involving all of the benefits of full-time employment paid on a pro-rata basis.’<sup>220</sup> This may be included in specific provisions, as per the *Childrens’ Services Award* cl 10.4(b)(iii). However, as set out in Table 2 above, this is not always the case.

[164] Historically, part-time employment arose primarily in response to the perceived needs of women workers. Access to part-time employment was originally subject to gender restrictions on this basis.<sup>221</sup> Part-time work was also subject to limits to prevent it being used to reduce hours for existing full-time employees. This issue was first articulated by a Full Bench of the Australian

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<sup>219</sup> *4 yearly review of modern awards – Casual employment and Part-time employment* [2017] FWCFB 3541 at [366]-[368].

<sup>220</sup> *Ibid* at [86].

<sup>221</sup> See, e.g., *Re Clerks (State) Award* [1953] AR (NSW) 199 at 224; *Re Vehicle Industry–Repair, Services & Retail–Award 1980* [1971] CAR 389.



Conciliation and Arbitration Commission in *Re Vehicle Industry – Repair, Services & Retail Award – 1980*.<sup>222</sup>

[165] Gender restrictions on access to part-time employment were removed in 1990 following the *Parental Leave Test Case*,<sup>223</sup> with a significant expansion of award part-time employment provisions occurring because of the 1995 *Personal Carer’s Leave Test Case – Stage 2*. The AIRC Full Bench then noted:

“It is apparent from the evidence that part-time employees are an integral part of the labour force. Part-time employment is one of the ways in which families reconcile their work and family commitments. The evidence shows an employee preference for part-time work, particularly among women.”<sup>224</sup>

[166] The Full Bench determined that, on application, part-time work provisions should be introduced into awards that did not already have them.<sup>225</sup> The part-time employment provision established for the *Hospitality Industry, Accommodation, Hotels, Resorts and Gaming Award 1995* because of the 1992 *Award Simplification Decision*<sup>226</sup> became a model clause adopted in other awards. Its features were described in a Full Bench decision issued during the 2008-09 award modernisation process.<sup>227</sup>

[167] As observed by the Full Bench in 2017 ‘award provisions have not been constructed simply to allow any person to be employed on any number of hours below full-time hours.’<sup>228</sup> Rather part-time work retains distinctive features that reflect its original purpose to provide flexibility for certain workers, notably those with care or study commitments.

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<sup>222</sup> *Re Vehicle Industry–Repair, Services & Retail–Award 1980* [1983] 5 IR 100; see also *4 yearly review of modern awards – Casual employment and Part-time employment* [2017] FWCFB 3541 at [89].

<sup>223</sup> *Parental Leave Test Case* [1990] 36 IR 1; *Federated Miscellaneous Workers Union of Aust & Ors* [1990] AIRC 750 at [13]-[14].

<sup>224</sup> *Personal/Carer’s Leave Test Case–Stage 2 decision* [1995] 62 IR 48; *Re Personal/Carer’s Leave* [1995] AIRC 2396 at [4.5.2]-[4.5.3].

<sup>225</sup> *4 yearly review of modern awards – Casual employment and Part-time employment* [2017] FWCFB 3541 at [92]-[93].

<sup>226</sup> *Award Simplification Decision* [1992] 75 IR 272.

<sup>227</sup> *4 yearly review of modern awards – Casual employment and Part-time employment* [2017] FWCFB 3541 at [94] citing Section 1.01 *Award Modernisation Decision* [2009] AIRCFB 826 at [136].

<sup>228</sup> *4 yearly review of modern awards – Casual employment and Part-time employment* [2017] FWCFB 3541 at [97].



## Labour hire

[168] Labour-hire typically refers to an arrangement whereby a labour hire firm hires a worker to perform work for a third party, the host firm. The worker has no contract with the host firm and, as a result, cannot make an unfair dismissal claim against the host. Australian courts have in general held that the interposition of a labour hiring agency between its clients and the workers it hires out to them does not result in an employee-employer relationship between the client and the worker.<sup>229</sup>

[169] The use of labour-hire arrangements as a potential mechanism for avoiding employment-related obligations was recognised in *Fair Work Ombudsman v Ramsey Food Processing Pty Ltd And Stuart Ramsey*. In that decision, Buchanan J observed:

“ . . . arrangements whereby labour is provided by one company to another, without the recipient becoming thereby an employer, are longstanding and unremarkable. There appears no place for an assumption of illegality or illegitimate purpose from the mere fact that a “labour hire” arrangement has been put in place. The Australian cases recognise that, provided the arrangement meets certain objective criteria.

Utilisation in Australia of labour hire arrangements has increased significantly in past decades. There is no doubt that sometimes such arrangements reflect a desire by the proprietors of a business to avoid liability for employment related obligations. That is not illegal as an objective. It has been traditionally reflected in the ability of a business to let a contract “for services” (independent contracting) rather than making a contract “of service” (employment). At one level of analysis, a labour-hire contract is just an example of a business obtaining necessary labour on contract from another business, like the cases already discussed.”<sup>230</sup>

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<sup>229</sup> See e.g. *Mason & Cox Pty Ltd v McCann* (1999) 74 SASR 438; *Skilled Engineering Pty Ltd v Gill* (unreported, Supreme Court, SA, 2280 of 1990, King CJ, Cox and Bollen JJ, 11 July 1991); *McMahon Services Pty Ltd v Cox* (2001) 78 SASR 540; *Swift Placements Pty Ltd v WorkCover Authority (NSW)* (2000) 96 IR 69; *Drake Personnel Ltd v Commissioner of State Revenue (Vic)* (2000) 2 VR 635; 105 IR 122; *Construction Industry Training Board v Labour Force Ltd* [1970] 3 All ER 220; *McMeechan v Secretary of State for Employment* [1997] IRLR 353; *Montgomery v Johnson Underwood Ltd* [2001] ICR 819.

<sup>230</sup> [\[2011\] 198 FCR 174](#) at [60]-[61].



[170] As highlighted in Table 3—Labour-hire provisions, all seven awards, consistent with all 121 modern awards, contain provisions that relate to labour-hire employers and employees, subject to exemptions pertaining to classification structures and general sector coverage. A comparison of provisions between awards is presented below.

[171] During the awards modernisation process, a Full Bench of the AIRC considered whether a specific labour hire award should be created. In a Statement of September 2009, the AIRC Full Bench stated:

“During the Stage 4 pre-drafting consultations no employer or employer organisation sought an award to cover persons engaged by labour hire companies to perform work for other employers. In fact, the ACTU, unions and employer organisations without exception opposed the making of a modern award for the labour hire industry. They submitted that the coverage of labour hire employees is more appropriately dealt with by the industry award which covers the industry in which such employees are placed. It was submitted that such awards already contain terms and conditions which take into account the circumstances of the employment and are likely to reflect the terms and conditions of employment applicable to the host organisations’ own employees. Similar considerations arise in relation to awards with occupational coverage.”<sup>231</sup>

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<sup>231</sup> [\[2009\] AIRCFB 865](#) at [136].



**Table 3—Labour-hire provisions**

	<u>Children's Services Award</u>	<u>Clerks Award</u>	<u>Fast Food Award</u>	<u>Retail Award</u>	<u>Hospitality Award</u>	<u>Restaurant Award</u>	<u>SCHADS Award</u>
<b>Labour-hire coverage</b>	Award covers any employer which supplies labour on on-hire basis in industry set out in cl 4.1 in respect of on-hire employees in classifications covered by award, and those on-hire employees, while engaged in the performance of work for a business in industry (subject to exclusions) <b>cl 4.5</b>	Award covers on-hire employees working in a classification defined in Sch A and on-hire employers of employees if the employer is not covered by another award containing more appropriate classification to work performed by employee <b>cl 4.2(a)</b>	Award covers on-hire employees while working for business in the fast-food industry (with a classification defined in cl 12.4) <b>cl 4.3(a)</b>	Award covers on-hire employees working in the general retail industry (with a classification defined in Sch A) and the on-hire employers of those employees <b>cl 4.3(a)</b>	Award covers on-hire employees while working for business in the hospitality industry (with a classification defined in Sch A) <b>cl 4.3(a)</b>	Award covers on-hire employees while working for business in the restaurant industry (with a classification defined in Sch A) <b>cl 4.3(a)</b>	Award covers any employer which supplies labour on on-hire basis in sectors set out in cl 4.1 in respect of on-hire employees in classifications covered by award, and those on-hire employees engaged in performance of work for a business in a relevant industry. Subject to exclusions from coverage <b>cl 4.5</b>



## 4.1.2 Payment frequency provisions

- [172] Section 323 of the FW Act specifies both the method and frequency that an employer must pay to an employee for amounts payable to the employee in relation to the performance of work. As per the *Fair Work Regulations 2009 (Cth)*, payslips must include information such as time worked, hourly pay rates, any deductions and superannuation contributions. For casual and other less secure workers who have unpredictable hours, this information may be particularly important.
- [173] The Full Bench has examined the issue of payment of wages on a number of separate occasions, considering timing of payment, timing at payment on termination, accrual of wages and other amounts.<sup>232</sup> Payment of wages in modern awards have been canvassed perhaps most extensively in the 2018 and 2016 *4 yearly review of modern awards – Payment of wages* Full Bench decisions.<sup>233</sup> These decisions demonstrate the significant industry-level differences in payment frequency provisions across modern awards, in addition to change over time.
- [174] As outlined in *Table 4– Comparison of payment frequency provisions* below, all seven awards allow weekly or fortnightly payment frequencies. The Children’s Services Award, Clerks Award and Restaurant Award also allow for monthly pay periods, where this is agreed upon between employers and employees. Clause 17.2 of the Clerks Award further stipulates that, where monthly pay periods apply, these must be paid two weeks in arrears and two weeks in advance. No other awards specify a set payment schedule.
- [175] Excluding the SCHADS Award and Clerks Award, the remaining five in-scope awards specify that casual employees must receive payment on termination of engagement. Exceptions exist where employers and employees agree to weekly or fortnightly pay, as per the Fast Food Award, Retail Award and Hospitality Award.

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<sup>232</sup> See *4 yearly review of modern awards – Payment of wages* [\[2016\] FWCFB 7455](#); [\[2016\] FWCFB 8463](#); [\[2017\] FWCFB 2290](#); [\[2017\] FWCFB 2729](#); [\[2018\] FWCFB 3566](#); [\[2018\] FWCFB 3566](#).

<sup>233</sup> [\[2018\] FWCFB 3566](#) at [8].



**Table 4—Comparison of payment frequency provisions**

	<u>Children's Services Award</u>	<u>Clerks Award</u>	<u>Fast Food Award</u>	<u>Retail Award</u>	<u>Hospitality Award</u>	<u>Restaurant Award</u>	<u>SCHADS</u>
<b>Pay period</b>	<p><b>Full-time and part-time employees:</b> Wages may be paid weekly, fortnightly or monthly by agreement between employer and employee <b>cl 19.2</b></p>	<p><b>Full-time, part-time and casual employees:</b> Employer may determine pay period as weekly OR fortnightly.</p> <p>Employer and individual or majority of employees may agree to monthly pay periods.</p> <p>If monthly payment is agreed to, must be made on basis of 2 weeks in advance and 2 weeks in arrears <b>cl 17.2</b></p>	<p><b>Full-time and part-time employees:</b> Employer may determine pay period as weekly or fortnightly.</p> <p>Must be paid according to actual hours worked by employee or averaged over a fortnight. <b>cl 16.1-2</b></p>	<p><b>Full-time and part-time employees:</b> Employer may determine pay period as weekly or fortnightly.</p> <p>Must be paid according to actual hours worked by employee or averaged over a fortnight.</p> <p>If employer paid Retail Employee Level 4 or above on a monthly basis before 1 January 2010, this may continue <b>cl 18.1-2</b></p>	<p><b>Full-time and part-time employees:</b> Employer and individual employee may agree to weekly or fortnightly pay period.</p> <p>Employer may determine that monthly pay period applies in the case of annualised wage arrangements or salary absorption (Managerial Staff (Hotels)) provisions <b>cl 23.1</b></p>	<p><b>Full-time and part-time employees:</b> Employer may determine pay period as weekly or fortnightly. Employer and an individual employee may agree to a monthly pay period <b>cl 19.1</b></p>	<p><b>Full-time, part-time and casual employees:</b> Wages paid weekly or fortnightly <b>cl 24.1</b></p>



	<u>Children's Services Award</u>	<u>Clerks Award</u>	<u>Fast Food Award</u>	<u>Retail Award</u>	<u>Hospitality Award</u>	<u>Restaurant Award</u>	<u>SCHADS</u>
	<p><b>Casual employees:</b> Casual employee may, by mutual agreement, be paid weekly OR at the termination of each engagement <b>cl 10.5(d)</b></p>		<p><b>Casual employees:</b> Employer must pay casual employees at the end of each engagement, weekly or fortnightly in accordance with pay arrangements for full-time employees <b>cl 11.4</b></p>	<p><b>Casual employees:</b> Employer must pay casual employees at the end of each engagement, weekly or fortnightly in accordance with pay arrangements for full-time employees <b>cl. 11.4</b></p>	<p><b>Casual employees:</b> Employer must pay casual employees at the end of each engagement unless employer and employee have agreed that pay period is either weekly or fortnightly <b>cl. 11.5</b></p>	<p><b>Casual employees:</b> Employer must pay casual employees at the end of each engagement unless employer and employee have agreed that pay is either weekly or fortnightly. <b>cl 11.4</b></p>	
<b>Payment day</b>	<p>Except on termination of employment all wages including overtime will be paid on any day of the week other than Saturday or Sunday <b>cl. 19.1</b></p>	N/A	N/A	<p>Wages must be paid on a regular pay day.</p> <p>Employers must notify employees in writing about which day is the regular pay day. Regular pay day may only be changed by employer giving 4 weeks' written notice. <b>cl. 18.3</b></p>	<p>Except on termination of employment, wages may be paid on any day other than Friday, Saturday or Sunday. However, if employer and majority of employees agree, wages may be paid on the Friday of a week during which there is a public holiday. <b>cl. 23.2</b></p>	<p><b>cl. 19.2</b> identical to Hospitality Award provision</p>	N/A





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### 4.1.3 Rostering provisions

- [176] Modern awards contain a wide range of provisions concerning roosting arrangements. As noted in section 2.1, the Expert Panel in the *AWR 2022-23 Decision* identified roosting arrangements as a type of award provision likely to be relevant to the issue of job security in the context of modern awards. The Minister also identified roosting provisions as an example of award terms which could be considered by the Commission during the Awards Review.
- [177] Awards contain different provisions that establish when a roster must be displayed or distributed, how a roster may be altered once made (and any associated notifications), the distribution of hours, guaranteed hours and part-time work arrangements. These provisions have a potential impact on job security as a stable and predictable income depends on regular and reliable hours. A comparison of roosting arrangement provisions that may impact on the predictability or stability of an employee's hours is included below in *Table 5—Comparison of roosting arrangement provisions*.
- [178] The degree of control over rosters largely rests with employers. The Retail Award, for example, stipulates that: 'the employer may make permanent roster changes at any time by giving the employee at least 7 days' written notice of the change. If the employee disagrees with the change, the period of written notice of the change required to be given is extended to at least 14 days in total.'<sup>234</sup> Seven days' written notice is generally required for roster change for employees other than part-time employees. The duration of these changes may differ between awards. Specific wording may also impact the job security of relevant employees.
- [179] Disputes around roosting or hours are subject to dispute resolution processes specified elsewhere in the award. Dispute resolution clauses are discussed further in section 4.2.

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<sup>234</sup> Retail Award at cl 15.9(e).



**Table 5 - Comparison of rostering arrangement provisions**

	<u>Children's Services Award</u>	<u>Clerks Award</u>	<u>Fast Food Award</u>	<u>Retail Award</u>	<u>Hospitality Award</u>	<u>Restaurant Award</u>	<u>SCHADS</u>
<b>Notification requirements for roster change</b>	<p>Employer may give 7 days' notice</p> <p>In absence of notice, overtime payable until 7 days after date of notice</p> <p>Employee may waive or shorten notice period</p> <p>7 days' notice not required where change results from emergency outside employer's control. <b>cl 21.7(b)(i)-(v)</b></p>	<p>Employer may change start and finish times for shiftworkers by giving 7 days' notice or with mutual agreement <b>cl 26.4(a)-(b)</b></p>	N/A	<p>7 days' written notice for permanent roster change</p> <p>If employee disagrees with change, notice required extends to at least 14 days <b>cl 15.9(e)</b></p>	<p>Changed any time by mutual agreement or by employer giving 7 days' notice <b>cl 15.5(d)</b></p>	<p><b>cl 15.3(d)</b> identical to Hospitality Award provision</p>	<p>7 days' notice given of a change in roster <b>cl 25.5(d)(i)</b></p> <p>Roster may be changed at any time to:</p> <ul style="list-style-type: none"> <li>• accommodate agreed shift swap; or</li> <li>• enable service of organisation to be carried on where another employee is absent from duty on account of illness or emergency <b>cl 25.5(d)(ii)(A)-(B)</b></li> </ul>



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	<u>Children's Services Award</u>	<u>Clerks Award</u>	<u>Fast Food Award</u>	<u>Retail Award</u>	<u>Hospitality Award</u>	<u>Restaurant Award</u>	<u>SCHADS</u>
<b>Display and notification of roster</b>	Roster posted at a place readily accessible indicating rostered hours of work <b>cl 21.7(a)</b>	N/A	N/A	Roster exhibited on a notice board/accessible electronic means <b>cl 15.9(a)</b>	Employer must post the roster in conspicuous place <b>cl 15.5(c)</b>	<b>cl 15.3(c)</b> identical to Hospitality Award	Roster conveniently accessible to employees/posted at least 2 weeks before roster period  Not obligatory for employer to display roster of ordinary hours of work of casual or relieving staff <b>cl 25.5</b>
<b>Rostered days off: notice requirements</b>	N/A	Employer must give employee 4 weeks' notice of day employee will take as rostered day off <b>cl. 14.4</b>	N/A	N/A	Employer must, where practicable, give employee min 2 weeks' notice of any rostered day off or accrued days off. May be changed by mutual agreement or for reasons beyond employer's control (including sickness) <b>cl 15.6</b>	<b>cl 15.4</b> identical to Hospitality Award	N/A



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	<u>Children's Services Award</u>	<u>Clerks Award</u>	<u>Fast Food Award</u>	<u>Retail Award</u>	<u>Hospitality Award</u>	<u>Restaurant Award</u>	<u>SCHADS</u>
<b>Substitution of rostered days off</b>	N/A	<p>With employer agreement, employee may substitute rostered day off for another</p> <p>Employer may substitute another day for a rostered day off in listed circumstances (machinery breakdown etc.) <b>cl 14.5</b></p>	N/A	<p>With agreement of majority of affected employees, employer may substitute day or half day for a rostered day or half day off in listed circumstances (machinery breakdown etc.).</p> <p>Rostered day off may be changed by employer and an employee by mutual agreement <b>cl 15.6(i)-(ii)</b></p>	N/A	N/A	N/A



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	<u>Children's Services Award</u>	<u>Clerks Award</u>	<u>Fast Food Award</u>	<u>Retail Award</u>	<u>Hospitality Award</u>	<u>Restaurant Award</u>	<u>SCHADS</u>
<b>Make-up time arrangement</b>	Employee may, with employer consent, work make-up time where employee takes time off during ordinary hours and works those hours at a later time during ordinary spread of hours <b>cl 21.8</b>	Employer and employee may agree that employee may take time off during ordinary hours and make up time by working at another time during ordinary hours <b>cl 13.8</b>	N/A	N/A	Employer and majority of employees may agree to make up time arrangement where employee takes time off during the employee's ordinary hours of work and makes up that time later <b>cl 15.4</b>	Employer and majority of employees may agree to introduce an arrangement under which an employee takes time off during the employee's ordinary hours of work and makes up that time later <b>cl 15.2</b>	If a service is cancelled by a client, employer may direct employee to perform other work or cancel the rostered shift. Employer is required to either pay employee amount they would have been paid had the shift not been cancelled or provide employee with make-up time. <b>cl. 25.5(f)(i)-(iv)</b>  Make-up time applicable when employee notified of cancellation at least 12 hours prior <b>cl 25.5(f)(v)</b>



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	<u>Children's Services Award</u>	<u>Clerks Award</u>	<u>Fast Food Award</u>	<u>Retail Award</u>	<u>Hospitality Award</u>	<u>Restaurant Award</u>	<u>SCHADS</u>
<b>Direction to take annual leave during shutdown</b>	<p>Applies only to Christmas vacation period</p> <p>Employer must give 28 days' written notice or as agreed period between employer and majority of relevant employees; OR as soon as reasonably practicable to employees subsequently engaged</p> <p><b>cl 24.4</b></p>	<p>Applies to period employer intends to shutdown all/part of operation (otherwise identical to Children's Services Award provision)</p> <p><b>cl 32.5</b></p>	N/A	cl 28.4 identical to Clerk's Award	<p>cl 30.4 identical to Clerk's Award</p> <p>Note leave without pay arrangements for certain catering employees</p> <p><b>cl 30.5</b></p>	cl 25.4 identical to Clerk's Award	N/A



#### 4.1.4 Minimum payment terms

[180] Minimum payment terms (also referred to as minimum engagement terms) specify the minimum amount of time an employee can work for each engagement or shift and the minimum payment to which an employee is entitled. As set out below in *Table 6—comparison of minimum payment terms*, all seven awards under consideration contain minimum engagement periods for both part-time and casual employees.

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

“The rationale for minimum periods of engagement is one of protecting employees from unfair prejudice or exploitation. Given the time and monetary cost typically involved in an employee getting to and from work, it has long been recognised that employees, especially casual employees, can be significantly prejudiced if a shift is truncated by the employer on short notice (as would otherwise be lawful in a typical casual engagement) or the employee can be pressured into accepting unviable short shifts in order to retain access to longer shifts.”<sup>235</sup>

[182] The Full Bench in the *4 yearly review casuals and part-time decision* articulated the rationale of minimum engagement period in similar terms:

“Minimum engagement periods in awards have developed in an ad hoc fashion rather than having any clear founding in a set of general principles. However their fundamental rationale has essentially been to ensure that the employee receives a sufficient amount of work, and income, for each attendance at the workplace to justify the expense and inconvenience associated with that attendance by way of transport time and cost, work clothing expenses, childcare expenses and the like. An employment arrangement may become exploitative if the income provided for the employee’s labour is, because of very short engagement periods, rendered negligible by the time and cost required to attend the employment. Minimum engagement periods are also important in respect of the incentives for persons to enter the labour market to take advantage of casual and part-

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<sup>235</sup> *Victorian Employers' Chamber of Commerce and Industry* [2012] FWAFB 6913 at [12].



time employment opportunities (and thus engage the consideration in paragraph (c) of the modern awards objective in s.134).<sup>236</sup>

[183] Minimum payment terms did not receive systematic consideration by the Award Modernisation Full Bench of the AIRC, with minimum payment terms contained in pre-reform state and federal awards remaining largely preserved.<sup>237</sup> This is the case with respect to the following minimum payment/engagement provisions: the 3-hour part-time minimum engagement in the Clerks, Fast Food, Retail, Hospitality and Restaurant Awards and the 2-hour part-time minimum engagement period in the Children's Services Award. Similarly, the 2-hour casual minimum engagement periods in the Children's Services, Hospitality Award and Restaurant Awards<sup>238</sup> and the 3 hour casual minimum engagement periods in the Clerks and Fast Foods Award reflect the entitlements inherited from relevant pre-reform awards.

[184] Given that these provisions have remained largely unchanged since Award Modernisation, this analysis focuses on instances that depart from standard minimum engagement provisions.

### Retail Award

[185] The Retail Award provides for a casual minimum payment period of 3 hours. However, this period can be reduced to 1.5 hours in the following circumstances:

- the employee is a full-time secondary school student;
- the employee is engaged to work between 3:00 pm and 6:30 pm on a day on which the employee is required to attend school;
- the employee, with the approval of the employee's parent or guardian, agrees to work for fewer than 3 hours; and
- employment for a longer period than the agreed period is not possible either because of the operational requirements of the employer or the unavailability of the employee.<sup>239</sup>

[186] The Retail Award, including a 3-hour minimum payment period for all casual employees, commenced operation on 1 January 2010.<sup>240</sup> In 2010 retail employers sought to reduce

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<sup>236</sup>4 yearly review of modern awards – Casual employment and Part-time employment [2017] FWCFB 3541 at [399].

<sup>237</sup> Victorian Employers' Chamber of Commerce and Industry [2012] FWAFB 6913 at [12].

<sup>238</sup>Note also maximum 12 hour casual engagement under the Hospitality and Restaurant Awards at cl 11.2(a).

<sup>239</sup> Retail Award at cl 11.3.

<sup>240</sup> Award modernisation [2008] AIRCFB 1000; PR985114.





minimum engagement periods for secondary school students as part of an unsuccessful application to vary the Retail Award to provide a two-hour minimum for all casual employees.<sup>241</sup>

[187] Following a June 2011 decision, Vice President Watson of the then named Fair Work Australia approved a revised 1.5 hours minimum payment/engagement entitlement for secondary school students.<sup>242</sup> Vice President Watson set out his reasoning for the variation as follows:

"I consider that a modified variation to the Award should be made which confines the proposed exception to the three hour minimum engagement period to circumstances where a longer period of employment is not possible. This will ensure that where a longer period is possible the three hour minimum will continue to apply and school students will continue to have the benefit of such an engagement."<sup>243</sup>

[188] Before a determination varying the Retail Award was issued, the Shop, Distributive and Allied Employees Association (SDA) lodged a notice of appeal and a stay was granted. On appeal the SDA argued that Vice President Watson misunderstood or failed to properly apply the requirement in s 157(1) and (2)(b) of the FW Act, failed to give adequate reasons, did not have a proper evidentiary basis for his decision and that the variation contravened s153 of the FW Act which prohibits discriminatory provisions in modern awards.<sup>244</sup> The SDA's appeal was dismissed on 14 September 2011 and a determination varying the Retail Award was issued, operative from October 2011.<sup>245</sup>

[189] The SDA applied for judicial review of the September 2011 decision on the basis that the Retail Award discriminated against secondary school students, however the Federal Court of Australia (Tracy J) dismissed the application in May 2012.<sup>246</sup>

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<sup>241</sup> *National Retail Association Ltd; Master Grocers Australia Limited; Australian Retailers Association; Jim Whittaker* [2010]; [FWA 5068](#); *Appeal by National Retail Association Limited* [2010] [FWAFB 7838](#)

<sup>242</sup> *National Retail Association Limited* [2011] [FWA 3777](#)

<sup>243</sup> *Ibid* at [48].

<sup>244</sup> *Shop, Distributive and Allied Employees Association* [2011] [FWAFB 6251](#)

<sup>245</sup> *National Retail Association Limited* [2011] [FWA 6602](#); [PR510566](#).

<sup>246</sup> *Shop, Distributive and Allied Employees Association v National Retail Association (No 2)* [2012] [FCA 480](#).



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## SCHADS Award

[190] The SCHADS Award provides for a 3-hour minimum payment period for part-time and casual social and community services employees, except when undertaking disability services work. All other casual and part-time employees covered by the SCHADS Award are entitled to a minimum engagement period of 2 hours.

[191] The 2-hour minimum payment for part-time employees and the increase to the minimum engagement period for casual home care employees from 1 hour to 2 hours was introduced in the 4 yearly review of modern awards—*Social, Community, Home Care and Disability Services Industry Award 2010—Substantive claims* matter, with the provisions taking effect from 1 July 2022.<sup>247</sup> Prior to this variation the SCHADS Award did not include a part-time minimum engagements provision.

[192] In deciding to vary the Award, the Full Bench noted that the task of considering minimum payment periods/engagements in a modern award needs to be undertaken having regard to the particular characteristics of the industry covered by the award, finding that:

“In our view, a 2 hour minimum engagement (payment) period for casual and part-time employees undertaking disability work; work in the crisis assistance and supported housing sector and employees in family day care reflects an appropriate balance between the various considerations and is a fair and relevant minimum safety net term. We proposed to retain the existing 3 hour minimum payment period for casual SACS employees, except when they are undertaking disability work and extend the operation of the current minimum payment provisions to part-time employees.<sup>248</sup>

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<sup>247</sup> See 4 yearly review of modern awards—*Social, Community, Home Care and Disability Services Industry Award 2010—Substantive claims* [2021] FWCFB 2383; [2021] FWCFB 5244; [2021] FWCFB 5641; and PR737905.

<sup>248</sup> 4 yearly review of modern awards—*Social, Community, Home Care and Disability Services Industry Award 2010—Substantive claims* [2021] FWCFB 2383 at [367].



**Table 6—comparison of minimum payment period terms**

	<u>Children's Services Award</u>	<u>Clerks Award</u>	<u>Fast Food Award</u>	<u>Retail Award</u>	<u>Hospitality Award</u>	<u>Restaurant Award</u>	<u>SCHADS</u>
<b>Part time employees</b>	2 consecutive hours per shift cl. 10.4(e)	3 consecutive hours per shift cl. 10.5	3 consecutive hours per shift cl. 10.2	3 consecutive hours cl. 10.9	3 ordinary hours on any day cl. 15.2(a)	3 hours in a day cl. 10.7(b)	<b>For part-time and casual employees:</b> For social and community services employees (except when undertaking disability services work)— 3 hours per shift;  all other employees— 2 hours per shift. <b>cl. 10.5</b>
<b>Casual employees</b>	2 hours for each engagement cl. 10.5(c)	3 hours per engagement cl. 11.4	3 consecutive hours per day cl. 11.3	3 daily hours cl. 11.2, or  1.5 hours in the case of secondary school students under certain circumstances cl. 11.3	2 consecutive hours on each occasion cl. 11.3	2 consecutive hours on each occasion cl. 11.3	



#### 4.1.5 Guaranteed hours and regular work patterns for part-time employees

- [193] Minimum hours of work per day and per week was identified as likely to be a relevant consideration to job security in the *AWR 2022-23 Decision*.<sup>249</sup> Guaranteed hours provisions specify the minimum number of hours that part-time employees are to work each week or roster cycle. Insecure hours, being hours that are too few, too many or too irregular are a feature of insecure work. Accordingly, this type of provision may impact the predictability of a part-time employee's hours and therefore their income. Table 7 compares the guaranteed hours provisions in the seven awards subject of the Awards Review. Each requires part-time employees and their employers to agree in writing on a regular pattern of work upon engagement.
- [194] Some of the awards, such as the Children's, Clerks, Retail and Fast Food Awards require written agreement on the number of hours to be worked each week, the days of the week the employee will work and the starting and finishing times each day. The Hospitality and Restaurant Awards require an agreement on the days/hours that the employee is available to work the agreed hours.
- [195] The SCHADS Award provides that the agreed regular pattern of work does not necessarily have to provide the same guaranteed hours each week. This provision was included after an amendment made in the *Part-time and Casual Employment Full Bench in the 4 Yearly Review*. In its July 2017 decision the Full Bench found that the amendment would allow:
- “the employer and the employee to enter into an arrangement which provides, for example, that the employee worked 20 hours and 30 hours in alternating weeks, or that a specified higher number of hours would be worked at particular times of the year (such as during a season of sports events which the participant wished to attend). An arrangement of that nature would have the stability and predictability desired by the part-time employee, whilst allowing the part-time arrangement to meet the service requirements of particular NDIS plans.”<sup>250</sup>
- [196] The guaranteed hours clause in the Fast Food Award was also considered in the 4 yearly review of modern awards. Parties were seeking to vary the arrangements for part-time work to create

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<sup>249</sup> [2023] FWCFB 3500 at [28].

<sup>250</sup> 4 yearly review of modern awards – *Part-time employment and Casual employment*, [2017] FWCFB 3541 at [641].



‘flexible part-time work’ and include a minimum of 8 hours per week for part-time employees.<sup>251</sup> Whilst the Full Bench was not persuaded to make all of the changes sought, restrictions on the capacity to vary part-time hours including removing the requirement to record an agreement to vary the regular hours for a shift in writing *before* the shift and the requirement to provide a copy of the written agreement to the employee were relaxed.<sup>252</sup>

#### *Changes to regular pattern of work and guaranteed hours*

- [197] Once an employee and employer have agreed on a regular pattern of work each award makes provision for that pattern of work to be altered by written agreement. The days worked may be altered by the employer without the employee’s agreement by giving 7 days’ notice in the Children’s Award and Clerks Award.
- [198] In the Hospitality Award and Restaurant Award the guaranteed hours can be altered with the written consent of the employee, but the rostering provisions also appear to allow the roster to be changed by the employer in the absence of agreement provided 7 days’ notice is given. However, in both the Hospitality and Restaurant Awards clause 10.7 restricts an employer from rostering a part-time employee to work outside of the employee’s agreed availability.
- [199] The Fast Food and Retail Awards do not contain a provision to allow an employer to change the regular pattern of hours without the employee’s agreement. The SCHADS Award similarly does not contain a provision for an employer to make unilateral changes to a part-time employee’s regular pattern of hours. Greater flexibility to change the agreed pattern of hours in the SCHADS Award was sought by a number of parties during the 4 yearly review of modern awards, however this was ultimately rejected by the Part-time and Casual Employment Full Bench because the evidence did not establish:

“. . . that changes to the scheduling of attendances or cancellations at short notice have become such a major feature of the operation of the NDIS that it is necessary at this time

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<sup>251</sup> *Fast Food Industry Award 2010 – Award stage – substantive issues*, [\[2019\] FWCFB 4679](#).

<sup>252</sup> *Ibid* at [26] citing *Fast Food Industry Award 2010 – Award stage – substantive issues – Ai Group claims*, [\[2019\] FWCFB 272](#).



for the SCHCDSI Award to be altered to allow for the employer to be able to impose unilaterally short notice roster changes on employees.”<sup>253</sup>

#### *Request to Review Guaranteed Hours*

[200] The Retail, Hospitality, Restaurant and SCHADS Awards provide that if an employee’s guaranteed hours are less than the ordinary hours the employee worked in the previous 12 months, the employee may request in writing that the employer increase the guaranteed hours on an ongoing basis to reflect the ordinary hours being regularly worked. In the case of the Retail Award, this request may only be made once every 12 months while the SCHADS Award gives part-time employees the ability to make a request every 6 months.

[201] The Retail, Hospitality, Restaurant and SCHADS Awards provide that an employer may refuse the request only on reasonable business grounds and must specify the reason in writing. In the Retail and SCHADS Awards, employers inclined to reject a request must discuss the request with the employee and genuinely try to reach agreement.

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<sup>253</sup> 4 yearly review of modern awards – Part-time employment and Casual employment, [\[2017\] FWCFB 3541](#) at [639].



**Table 7—Comparison of guaranteed hours and regular pattern of work provisions (part-time employees)**

	<u>Children's Services Award</u>	<u>Clerks Award</u>	<u>Fast Food Award</u>	<u>Retail Award</u>	<u>Hospitality Award</u>	<u>Restaurant Award</u>	<u>SCHADS</u>
<b>Agreement on regular pattern of work upon engagement</b>	<ul style="list-style-type: none"> <li>• hours of work per day</li> <li>• days of work</li> <li>• start/finishing times</li> </ul> <b>cl. 10.4(c)</b>	<ul style="list-style-type: none"> <li>• number of hours of work per day</li> <li>• days of work</li> <li>• start/finishing times</li> </ul> <b>cl. 10.2</b>	<ul style="list-style-type: none"> <li>• number of hours worked each day;</li> <li>• days of work</li> <li>• start/finish times</li> <li>• time and length of meal breaks</li> <li>• daily engagement of 3 hours</li> </ul> <b>cl 10.3</b>	<ul style="list-style-type: none"> <li>• number of hours worked each day (<b>guaranteed hours</b>)</li> <li>• start/finish times</li> <li>• time and length of meal breaks</li> </ul> <b>cl. 10.5</b>	<ul style="list-style-type: none"> <li>• hours of work guaranteed each week or, where employer operates a roster, hours guaranteed over roster cycle (<b>guaranteed hours</b>); and</li> <li>• days/hours during which employee is available to work guaranteed hours (<b>employee's availability</b>)</li> </ul> <b>cl. 10.4.</b>	<ul style="list-style-type: none"> <li>• hours of work guaranteed each week or, where employer operates a roster, hours guaranteed over roster cycle (<b>guaranteed hours</b>); and</li> <li>• days/hours during which employee is available to work guaranteed hours (<b>employee's availability</b>)</li> </ul> <b>cl. 10.4.</b>	<ul style="list-style-type: none"> <li>• ordinary hours worked each week (<b>guaranteed hours</b>), and</li> <li>• days of the week employee will work and start/finish times for each day</li> </ul> <b>cl.10.3(c)</b> <ul style="list-style-type: none"> <li>• Agreed regular pattern does not necessarily have to provide for the same guaranteed hours each week</li> </ul> <b>cl. 10.3(d)</b>
<b>Change to regular pattern of work by agreement</b>	Yes – must be in writing	Yes – must be in writing	Yes – must be in writing <b>cl.10.3(f)</b>  Written agreement before the variation occurs and Employer must retain record of agreement and give copy to	Yes – must be in writing <b>cl.10.6(a)-(b)</b>	Yes – requires employee's written consent <b>cl 10.5</b>	Yes - requires employee's written consent <b>cl 10.5</b>	Yes – must be in writing  May be ongoing or for a specified period <b>cl. 10.3(e)</b>



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	<u>Children's Services Award</u>	<u>Clerks Award</u>	<u>Fast Food Award</u>	<u>Retail Award</u>	<u>Hospitality Award</u>	<u>Restaurant Award</u>	<u>SCHADS</u>
			<p>employee cl. 10.7</p> <p>Variation for a particular shift by written agreement. If not kept, employer must pay overtime for hours in excess of regular pattern of work. cl. 10.5</p>				
<b>Change to regular pattern of work by employer – notice required</b>	Employer may change the <b>days</b> an employee is to work by giving <b>7 days' notice</b> unless employer makes the change as a result of emergency. cl. 10.4(d)(i)-(v)	<b>Days</b> worked can be changed by employer giving <b>7 days' notice</b> cl. 10.3-4	N/A	N/A	Employer gives <b>7 days' notice</b> if no mutual agreement cl. 15.5(d)	Employer gives 7 days' notice if no mutual agreement cl. 15.5(d)	N/A
<b>Employee can request to change hours</b>	N/A	N/A	N/A	N/A	If a genuine and ongoing change in personal circumstances, employee may alter the times they are available by giving 14 days' written notice cl. 10.11	If a genuine and ongoing change in personal circumstances, employee may alter the times they are available by giving 14 days' written notice cl. 10.11	N/A





	<u>Children's Services Award</u>	<u>Clerks Award</u>	<u>Fast Food Award</u>	<u>Retail Award</u>	<u>Hospitality Award</u>	<u>Restaurant Award</u>	<u>SCHADS</u>
					If employer cannot reasonably accommodate - new set of guaranteed hours must be agreed to <b>cl. 10.12(a)-(b)</b>	If employer cannot reasonably accommodate - new set of guaranteed hours must be agreed to <b>cl. 10.12(a)-(b)</b>	
<b>Request to review guaranteed hours</b>	N/A	N/A	N/A	Employee may request in writing an increase in guaranteed hours on an ongoing basis to reflect ordinary hours regularly worked.  Employee may only make request once every 12 months.  Employer must respond in writing within 21 days <b>cl. 10.11(a)-(c)</b>	Employee may request in writing that employer agree to increase their guaranteed hours.  If employer agrees variation must be recorded in writing before it occurs <b>cl. 10.8-9</b>	Employee may request in writing that employer agree to increase guaranteed hours.  If employer agrees variation must be recorded in writing before it occurs <b>cl. 10.8-9</b>	Employee may request in writing that employer increase their guaranteed hours.  Employer must respond in writing to request within 21 days <b>cl.10.3(g)(i)-(ii)</b>
<b>Refusal of request to change guaranteed hours on reasonable business grounds</b>	N/A	N/A	N/A	Before refusal, employer must discuss request with employee and genuinely try to reach agreement on increase that will give employee more	Employer must notify employee in writing of a refusal and the grounds for it <b>cl. 10.8-10</b>	Employer must notify employee in writing of a refusal and the grounds for it <b>cl. 10.8-10</b>	Before refusal, employer must discuss request with employee and genuinely try to reach agreement on increase that will give employee more



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	<u>Children's Services Award</u>	<u>Clerks Award</u>	<u>Fast Food Award</u>	<u>Retail Award</u>	<u>Hospitality Award</u>	<u>Restaurant Award</u>	<u>SCHADS</u>
				<p>predictable hours of work and reasonably accommodate employee's circumstances. Any increase must be recorded in writing. <b>cl.10.11(e)-(g)</b></p> <p>If agreement cannot be reached, employer's written response must include details of the reasons for refusal <b>cl. 10.11(g)</b></p>			<p>predictable hours of work and reasonably accommodate employee's circumstances. Any increase must be recorded in writing <b>cl.10.3(g)(i)-(v)</b></p> <p>If agreement cannot be reached, employer's written response must include details of the reasons for refusal <b>cl.10.3(g)(vi)</b></p> <p>Employee cannot make another request when employer refused a previous offer to increase in the last 6 months; or employer refused a request based on reasonable business grounds in the last 6 months <b>cl.10.3(viii)(A)-(B)</b></p>



## 4.2 Analysis of the standard clauses

[202] Modern awards include a range of standard clauses which are the same across the award system (with a few minor industry specific variations). The Full Bench during the 4 yearly review of modern awards considered standard provisions to be those that have arisen from previous test cases and are generally replicated in the same form across most awards.<sup>254</sup> These standard clauses relate to:

- Individual flexibility arrangements;
- Consultation about major workplace change;
- Consultation about changes to rosters or hours of work;
- Dispute resolution;
- Termination of employment;
- Redundancy.

[203] Annexure C provides a complete list of those modern awards that contain the standard clause and those that do not. Awards that contain the standard clause plus additional provisions are noted as 'additional provisions' in the table and counted in the standard clause total. In this section we set out the provisions, provide a brief history of the standard clauses in modern awards as well as any relevant Full Bench commentary.

### 4.2.1 Individual flexibility arrangements

[204] The standard individual flexibility arrangement (IFA) clause in modern awards enables an employer and employee to agree in writing to vary the application of the terms of the award relating to:

- arrangements for when work is performed;
- overtime rates;
- penalty rates;
- allowances; or
- annual leave loading.

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<sup>254</sup> 4 yearly review of modern awards – Plain language [2016] FWC 4756 at [5].



[205] An IFA can be initiated by the employer or the employee but must be genuinely made without coercion or duress. The IFA must result in the employee being better off overall than if the agreement had not been made.

[206] Section 144(1) of the FW Act requires all modern awards to include a flexibility term. The explanatory memorandum to the Fair Work Bill 2008 states:

“94. Modern awards will contain a flexibility clause enabling employers and employees to agree on flexible arrangements varying how modern awards work. This will ensure that the needs of employers and employees are met. It will assist employees in balancing their work and family responsibilities and improve retention and participation of employees in the workforce. The simplification and increased flexibility associated with modernised awards, together with the reduced regulatory burden on business, are all consistent with the Government's agenda of increasing productivity.”

[207] The award flexibility clause was inserted into all modern awards as part of the award modernisation process in 2008, as required by the Ministerial request of 28 March 2008. The award modernisation Full Bench identified that an award flexibility clause was a priority and published a model award clause as attachment C to a decision in June 2008.<sup>255</sup> In December 2008, the Full Bench made a further addition to the model clause requiring an employer to provide a written proposal to the employee and to take measures to ensure the employee understands the proposal.<sup>256</sup>

[208] The Ministerial request was amended on 18 December 2008.<sup>257</sup> The request included a requirement that any individual flexibility arrangement must result in the employee being better off overall and that the flexibility clause must prohibit an IFA from requiring the approval or consent of a non-party, except in relation to minors. The standard clause was modified by a Full Bench in April 2009.<sup>258</sup> References in the standard clause to ‘no-disadvantage’ were altered to ‘better off overall’ and a standard clause in relation to the approval or consent of a non-party was inserted into the award flexibility term.

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<sup>255</sup> *Award Modernisation* [2008] AIRCFB 550 at Attachment C.

<sup>256</sup> *Award Modernisation* [2008] AIRCFB 1000 at [38].

<sup>257</sup> *Ibid.*

<sup>258</sup> *Award Modernisation* [2009] AIRCFB 345 at [11]-[12].



[209] Modern awards which included the award flexibility clause came into effect on 1 January 2010. The award flexibility clause was varied on 15 April 2013 as part of the Transitional Review. The Transitional Review involved the review of all modern awards as required by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*. Fifteen applications were made to vary the standard award flexibility provision in 10 modern awards. The Full Bench was not persuaded to increase the scope of the award flexibility clause to allow variation of any term of a modern award.<sup>259</sup> It did however vary the standard clause so that IFAs could only be made after the employee has commenced employment. It also extended the notice of termination of an IFA from 4 weeks to 13 weeks, noting that s.145 of the FW Act provides safeguards for where the requirements for a flexibility term have not been met.<sup>260</sup>

[210] During the 4 yearly review of modern awards, the standard award flexibility clause was redrafted as part of the plain language process including renaming the clause ‘individual flexibility arrangements’.<sup>261</sup>

[211] The individual flexibility arrangements standard clause appears in 121 modern awards. The Textile Award contains additional provisions (giving the employee 7 working days to enable them to seek advice from the employee’s union, and providing that the individual flexibility arrangements do not extend to outworkers).<sup>262</sup>

[212] The standard clause is as follows:

**A. Individual flexibility arrangements**

**A.1** Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:

- (a) arrangements for when work is performed; or
- (b) overtime rates; or
- (c) penalty rates; or
- (d) allowances; or

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<sup>259</sup> *Modern Awards Review 2012–Award Flexibility* [2013] FWCFB 2170 at [99].

<sup>260</sup> *Ibid* at [187].

<sup>261</sup> *4 yearly review of modern awards – Plain language – standard clauses* [2017] FWCFB 4419 at [12].

<sup>262</sup> *Textile, Clothing, Footwear and Associated Industries Award 2020*, cls5.4 and 5.10.



- (e) annual leave loading.
- A.2** An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.
- A.3** An agreement may only be made after the individual employee has commenced employment with the employer.
- A.4** An employer who wishes to initiate the making of an agreement must:
  - (a) give the employee a written proposal; and
  - (b) if the employer is aware that the employee has, or should reasonably be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.
- A.5** An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.
- A.6** An agreement must do all of the following:
  - (a) state the names of the employer and the employee; and
  - (b) identify the award term, or award terms, the application of which is to be varied; and
  - (c) set out how the application of the award term, or each award term, is varied; and
  - (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
  - (e) state the date the agreement is to start.
- A.7** An agreement must be:
  - (a) in writing; and
  - (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- A.8** Except as provided in clause A.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.
- A.9** The employer must keep the agreement as a time and wages record and give a copy to the employee.
- A.10** The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.



**A.11** An agreement may be terminated:

- (a) at any time, by written agreement between the employer and the employee; or
- (b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).

**Note:** If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in s. 144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see s.145 of the FW Act).

**A.12** An agreement terminated as mentioned in clause A.11(b) ceases to have effect at the end of the period of notice required under that clause.

**A.13** The right to make an agreement under clause A is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

[213] Section 653(1)(b) of the FW Act requires the General Manager to conduct research into the extent to which IFAs under modern awards are being agreed to and the content of those arrangements. The research is to be conducted in relation to the first three years after the commencement of the FW Act and in each subsequent 3 year period (s.653(1A)). The April 2013 Transitional Review decision in relation to award flexibility provides some discussion of the General Manager's 2012 IFA Report.<sup>263</sup>

[214] In conducting the review and research, s 653(2) of the FW Act requires that the General Manager must consider the effect on the employment of women, part-time employees, persons from non-English speaking backgrounds, mature age persons, young persons and any other person prescribed by the regulations.

[215] The 2021 General Manager's Report<sup>264</sup> highlights the extent to which IFAs are being made and the content of those arrangements:

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<sup>263</sup> *Modern Awards Review 2012—Award Flexibility* [2013] FWCFB 2170 at [54].

<sup>264</sup> Murray Furlong, [General Manager's report into individual flexibility arrangements under section 653 of the Fair Work Act 2009](#), November 2021.



- The prevalence of IFAs is low but spread across a number of industries
- IFAs were more frequently initiated by employees than employers. Firms reported that IFAs were either mostly signed by females or found no discernible difference between females and males.
- Whether IFAs are made to vary the effect of award or enterprise agreement provisions depends on the industry in which it is made and the predominant instrument used in that industry.
- The most common reasons for initiating an IFA are to change an employee's hours of work and to address issues with overtime and penalties that result from the change.
- Variations requested by employers were changes to start/finish times; change in shifts and change in the days worked. For employees, it was also changes to start/finish times; change in days worked; and also reduction in number of days worked.
- Variations requested in IFAs and refused included working from home.
- The use of IFAs for regulating working from home during COVID-19 was uncommon.

#### 4.2.2 Consultation about major workplace change

[216] The standard consultation about major workplace change clause requires the employer to consult with employees about a major workplace change that is likely to have a significant effect on the employees. The employer must consider the matters raised by the employees but does not require the consent of the employees to make the change.

[217] Consultation about major workplace change clauses were inserted into all modern awards following the award modernisation process in 2008. In September 2008<sup>265</sup> the Award Modernisation Full Bench decided to adopt an award provision requiring employers to notify employees and their representatives of significant workplace change and to discuss the change. In a decision of December 2008,<sup>266</sup> and in response to a number of submissions from employers and employer bodies critical of the consultation clause in exposure drafts, the Full Bench noted that a clause in almost identical terms had appeared in most of the Commission's awards for many years and no issue of substance had been raised concerning its operation during that

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<sup>265</sup> *Award Modernisation* [2008] AIRCFB 717 at [18].

<sup>266</sup> *Award Modernisation* [2008] AIRCFB 1000.





period. The Full Bench stated that there is potential for real benefit to those employers and their employees if both parties approach consultation constructively.<sup>267</sup>

[218] The standard major workplace change clause was revised during the plain language process of the 4 yearly review of modern awards.<sup>268</sup> The plain language version of the clause appears in all 121 modern awards of general application. The *Cleaning Services Award 2020* and *Security Services Award 2020* also contain a 'Consultation about change of contract' clause noted as 'additional provisions' in Annexure C. The standard clause is as follows:

**B. Consultation about major workplace change**

- B.1** If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:
- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
  - (b) discuss with affected employees and their representatives (if any):
    - (i) the introduction of the changes; and
    - (ii) their likely effect on employees; and
    - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
  - (c) commence discussions as soon as practicable after a definite decision has been made.
- B.2** For the purposes of the discussion under clause B.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:
- (a) their nature; and
  - (b) their expected effect on employees; and
  - (c) any other matters likely to affect employees.
- B.3** Clause B.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

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<sup>267</sup> Ibid at [41].

<sup>268</sup> 4 yearly review of modern awards – Plain language – standard clauses [2017] FWCFB 4419 at [66]-[92].



- B.4** The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause B.1(b).
- B.5** In clause B significant effects, on employees, includes any of the following:
- (a) termination of employment; or
  - (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or
  - (c) loss of, or reduction in, job or promotion opportunities; or
  - (d) loss of, or reduction in, job tenure; or
  - (e) alteration of hours of work; or
  - (f) the need for employees to be retrained or transferred to other work or locations; or
  - (g) job restructuring.
- B.6** Where this award makes provision for alteration of any of the matters defined at clause B.5, such alteration is taken not to have significant effect.

### 4.2.3 Consultation about changes to rosters or hours of work

[219] A standard consultation about changes to rosters or hours of work clause was inserted into all modern awards in December 2013<sup>269</sup> following the enactment of the *Fair Work Amendment Act 2013* which amended the FW Act by inserting section 145A.

[220] Section 145A of the FW Act provides that a modern award must include a term requiring employers to consult employees about a change to their regular roster or ordinary hours of work, and was one of a number of measures intended to assist employees to balance work and family or caring responsibilities with the intent that the employee's views about the impact of the change be considered by the employer before the change is implemented or a definite decision is made.<sup>270</sup>

[221] The Revised Explanatory Memorandum to the Fair Work Amendment Bill 2013 states that '[t]he amendments will ensure that employers cannot unilaterally make changes that adversely impact

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<sup>269</sup> *Consultation clause in modern awards* [2013] FWCFB 10165.

<sup>270</sup> *Ibid* at [36]-[38].



upon their employees without consulting on the change and considering the impact of those changes on those employees' family and caring responsibilities'.<sup>271</sup>

[222] The employer is required to provide employees with information about a change to regular roster or ordinary hours of work and invite employees to give their views on the impact of the proposed change (particularly any impact upon the employees; family and caring responsibilities) and consider those views.

[223] In formulating the standard clause, the Full Bench in its December 2013 decision,<sup>272</sup> considered the meaning of the word 'consult' and noted that the precise content of an obligation to consult will depend on the 'extent and significance' of a proposed change in terms of its impact on affected employees. The Full Bench also noted that although the right to be consulted is a substantive right, it doesn't confer a power of veto and that consultation does not amount to joint decision making.

[224] The Full Bench also considered the relationship between the obligation to consult and other provisions in modern awards and disagreed with the contention put forward by some parties that the obligation to consult is displaced by other provisions in the modern award. For example, it was contended that where an award contains a provision that allows an employer to vary an employee's regular roster by giving a specified period of notice, the obligation to consult would not apply. The Full Bench stated that such a proposition is not consistent with s.145A or its legislative purpose and would render s 145A nugatory.

[225] As part of the 4 yearly review of modern awards, the standard consultation about changes to roster or hours of work clause was redrafted into plain language.<sup>273</sup> The plain language version of the standard clause currently appears in all 121 general modern awards. The Textile Award contains an additional provision which provides for translation of the information into an appropriate language.

[226] The standard clause is as follows:

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<sup>271</sup> [Revised Explanatory Memorandum](#), Fair Work Amendment Bill 2013 (Cth) at [45].

<sup>272</sup> *Consultation clause in modern awards* [\[2013\] FWCFB 10165](#), at [30]-[32].

<sup>273</sup> *4 yearly review of modern awards – Plain language – standard clauses* [\[2017\] FWCFB 4419](#) at [93]-[99].



**C. Consultation about changes to rosters or hours of work**

- C.1** Clause C applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.
- C.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).
- C.3** For the purpose of the consultation, the employer must:
- (a)** provide to the employees and representatives mentioned in clause C.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
  - (b)** invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.
- C.4** The employer must consider any views given under clause C.3(b).
- C.5** Clause C is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

[227] A couple of the recommendations set out in Annexure A call for a requirement of genuineness on the part of the employer when considering the impacts on the employee because of proposed roster changes.

[228] Recommendation 5 of The Senate Select Committee's interim report on Work and Care (Oct 2022) recommends 'amending section 145A of the Act to require employers genuinely consider employee views about the impact of proposed roster changes, and take the views of the employee, including working carers, into consideration when changing rosters and other work arrangements'.<sup>274</sup>

[229] Recommendation 21 of The Senate Select Committee on Work and Care – Final Report (March 2023) relevantly recommends that the Australian Government supports a review by the FWC of current industrial awards including requiring that employers genuinely consider employee views about the impact of proposed roster changes and to accommodate the needs of the employee.

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<sup>274</sup> Select Committee on Work and Care, [Interim report](#), October 2023, at [6.54].



## 4.2.4 Dispute resolution

[230] Section 146 of the FW Act requires modern awards to include a term for settling disputes.

[231] The standard dispute resolution clause sets out the procedure for settling disputes about any matters arising under the award or in relation to the NES. It is a tiered procedure requiring discussions firstly at the workplace level between the employee and relevant supervisor and then, if necessary, more senior levels of management. If there is no resolution, either party can refer the matter to the Commission.

[232] The dispute resolution clause was inserted into modern awards following the 2008 award modernisation process. In September 2008 the Full Bench decided<sup>275</sup> to include a clause intended to be simple, to emphasise the importance of resolution at the workplace, to encourage parties to agree on a process that would suit them if the dispute reached the Commission and to provide the Commission with the discretion and power to ensure settlement of the dispute. The clause was finalised in a decision<sup>276</sup> in December 2008. The Full Bench clarified that the operation of the clause was not intended to be confined to issues concerning one employee only and that if the dispute affects a group of employees, for the purposes of the procedure, each member of the group may be represented by the same representative.<sup>277</sup>

[233] The standard dispute resolution clause was redrafted during the 4 yearly review of modern awards as part of the plain language process as follows:<sup>278</sup>

### **D. Dispute resolution**

**D.1** Clause D sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the NES.

**D.2** The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.

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<sup>275</sup> *Award Modernisation [2008] AIRCFB 717*.

<sup>276</sup> *Award Modernisation [2008] AIRCFB 1000*.

<sup>277</sup> *Ibid* at [45].

<sup>278</sup> *4 yearly review of modern awards – plain language re-drafting – standard clauses [2017] FWCFB 4419* at [100]-[122].



- D.3** If the dispute is not resolved through discussion as mentioned in clause D.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.
- D.4** If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses D.2 and D.3, a party to the dispute may refer it to the Fair Work Commission.
- D.5** The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- D.6** If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the Act to use and that it considers appropriate for resolving the dispute.
- D.7** A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause D.
- D.8** While procedures are being followed under clause D in relation to a dispute:
- (a) work must continue in accordance with this award and the Act; and
  - (b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- D.9** Clause D.8 is subject to any applicable work health and safety legislation

**NOTE 1:** In addition to clause D, a dispute resolution procedure for disputes regarding the NES entitlement to request flexible working arrangements is contained in section 65B of the Act.

**NOTE 2:** In addition to clause D, a dispute resolution procedure for disputes regarding the NES entitlement to request an extension to unpaid parental leave is contained in section 76B of the Act.<sup>279</sup>

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<sup>279</sup> Note 1 and Note 2 were recently added to the standard dispute resolution clause with effect from 1 August 2023 as a result of the flexible work and unpaid parental leave amendments to the FW Act.



[234] The standard dispute resolution clause appears in all 121 general modern awards. Eighteen modern awards contain an additional clause in relation to dispute resolution leave.

## 4.2.5 Termination of employment

[235] The termination of employment clause was inserted into all modern awards as a result of the award modernisation process in 2008. The Full Bench in its September 2008 decision<sup>280</sup> decided to include a clause which adds to the NES by including provisions for notice by employees and a job search leave entitlement.

[236] The standard clause was finalised in December 2008.<sup>281</sup> The clause dealing with the withholding of monies by the employer should the employee fail to give the required notice of termination was redrafted to improve clarity.

[237] Notice periods provide employees with stability by ensuring that their employment is not terminated without warning. The notice period allows an employee time to secure alternative employment and to organise their finances.

[238] Section 117 of the NES specifies the minimum notice periods that employers must give employees when terminating their employment. It does not extend to certain employees including casual employees and employees hired for a fixed term, fixed task or seasonal contract.<sup>282</sup>

[239] The termination of employment standard clause in modern awards supplement the NES by specifying the period of notice that an employee must give an employer as well as providing a job search entitlement of one day for employees who have been given notice of termination of employment.

[240] The standard termination of employment clause, following plain language re-drafting during the 4 yearly review of modern awards is as follows:<sup>283</sup>

### E. Termination of employment

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<sup>280</sup> *Award Modernisation* [2008] AIRCFB 717.

<sup>281</sup> *Award Modernisation* [2008] AIRCFB 1000.

<sup>282</sup> *Fair Work Act 2009* (Cth) s 123(1).

<sup>283</sup> *4 yearly review of modern awards – plain language re-drafting – standard clauses* [2018] FWCFB 4704 at Attachment A.



**NOTE:** The NES sets out requirements for notice of termination by an employer. See sections 117 and 123 of the Act.

### E.1 Notice of termination by an employee

- (a) This clause applies to all employees except those identified in sections 123(1) and 123(3) of the Act.
- (b) An employee must give the employer notice of termination in accordance with Table X—Period of notice of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

**Table X—Period of notice**

Column 1	Column 2
<b>Employee's period of continuous service with the employer at the end of the day the notice is given</b>	<b>Period of notice</b>
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

**NOTE:** The notice of termination required to be given by an employee is the same as that required of an employer except that the employee does not have to give additional notice based on the age of the employee.

- (c) In paragraph (b) continuous service has the same meaning as in section 117 of the Act.
- (d) If an employee who is at least 18 years old does not give the period of notice required under paragraph (b), then the employer may deduct from wages due to the employee under this award an amount that is no more than one week's wages for the employee.
- (e) If the employer has agreed to a shorter period of notice than that required under paragraph (b), then no deduction can be made under paragraph (d).
- (f) Any deduction made under paragraph (d) must not be unreasonable in the circumstances.





## E.2 Job search entitlement

Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.

E.3 The time off under clause 12.3 is to be taken at times that are convenient to the employee after consultation with the employer.

[241] The standard termination of employment clause appears in 113 modern awards of general application. Ten of these awards have additional provisions (for example, requiring the employer to return the employee to the place of engagement following termination of employment). The remaining eight awards contain provisions that differ to the standard clause (see Annexure C below).

[242] While notice periods ensure that full-time and part-time employment is not terminated without warning and can allow an employee time to secure alternative employment and organise their finances, this notice does not extend to other types of employment, including casual employees.

### 4.2.6 Redundancy

[243] During the 2008 award modernisation process, a redundancy clause was inserted into all modern awards. The clause contained provisions dealing with transfer to lower paid duties, employees leaving during a notice period and a job search leave entitlement. The standard clause also noted that provisions in relation to redundancy pay are provided for in the NES.

[244] As with notice of termination provisions, redundancy provisions provide employees with the opportunity to secure alternative employment and organise their finances. The entitlement ranges from 4 weeks' pay for a worker with one year's service to 16 weeks' pay for a worker with between 9 and 10 years' service.<sup>284</sup>

[245] The redundancy provisions in the NES do not extend to certain employees including casual employees and employees hired for a fixed term, fixed task or seasonal contract.<sup>285</sup>

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<sup>284</sup> *Fair Work Act 2009* (Cth) ss 119-123.

<sup>285</sup> *Fair Work Act 2009* (Cth) s 123(1).



[246] The standard redundancy clause was redrafted in plain language during the 4 yearly review of modern awards and was inserted into 113 modern awards.<sup>286</sup> Twelve of these awards contain the standard clause plus additional provisions supplementing the NES. Six modern awards contain industry-specific redundancy clauses,<sup>287</sup> and three awards contain a variance of the standard clause (for example, they are missing the job search entitlement clause). Industry-specific redundancy schemes exist in industries where there is high labour mobility, but only where the industry specific redundancy scheme is an established feature of the industry.<sup>288</sup>

[247] The redrafted plain language standard redundancy clause is follows:

## **F. Redundancy**

**NOTE:** Redundancy pay is provided for in the NES. See sections 119 to 123 of the Act.

### **F.1 Transfer to lower paid duties on redundancy**

(a) Clause F.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.

(b) The employer may:

- (i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the Act as if it were a notice of termination given by the employer; or
- (ii) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in clause 42.1(c).

(c) If the employer acts as mentioned in paragraph F.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances, shift rates

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<sup>286</sup> 4 yearly review of modern awards – Plain language – standard clauses [2017] FWCFB 4419.

<sup>287</sup> Note: the *Higher Education (Academic Staff) Award 2020* has both the standard redundancy clause and an industry specific clause. It has been counted in both.

<sup>288</sup> *Award Modernisation* [2009] AIRCFB 345 at [75]-[82].



and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

## **F.2. Employee leaving during redundancy notice period**

- (a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the Act.
- (b) The employee is entitled to receive the benefits and payments they would have received under clause F or under sections 119 to 123 of the Act had they remained in employment until the expiry of the notice.
- (c) However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

## **F.3 Job search entitlement**

- (a) Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the Act for the purpose of seeking other employment.
- (b) If an employee is allowed time off without loss of pay of more than one day under clause F.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview.
- (c) A statutory declaration is sufficient for the purpose of clause 42.3(b).
- (d) An employee who fails to produce proof when required under clause 42.3(b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clause E.2.



## 5. Discussion questions

This chapter contains a list of questions for the purposes of framing and focusing submissions in response to this discussion paper and facilitating discussion at the conferences.

1. Are there specific provisions in the seven modern awards the subject of this review that parties consider are necessary to improve access to secure work across the economy? Parties are asked to specifically consider provisions dealing with:
  - a. Types or modes of employment;
  - b. Rostering arrangements, including rostering restrictions;
  - c. Payment of wages, in particular pay cycles;
  - d. Agreed regular patterns of work or guaranteed hours for part-time employees; and
  - e. Minimum engagement/payment periods.
2. Are there any additional specific award provisions that are consistent with the new modern awards objective? If so, parties are asked to consider and address whether it is relevant and necessary to vary any awards to include that or those specific award provision(s).
3. Are there specific award provisions that are not consistent with the new modern awards objective? If so, parties are asked to address whether it is relevant and necessary to vary any awards to amend or remove that specific award provision.
4. Having regard to the new modern awards objective, should the exclusion of casual employees from accessing certain NES entitlements (such as paid personal leave) continue?
5. Should any of the awards be varied to supplement these NES entitlement gaps for casual employees?
6. Is there evidence that use of individual flexibility arrangements undermines job security?



7. Having regard to the following modern award standard clauses:
  - Individual flexibility arrangements;
  - Consultation about major workplace change;
  - Consultation about changes to rosters or hours of work;
  - Dispute resolution;
  - Termination of employment; and
  - Redundancy.
  - a. Are provisions of the standard clauses consistent with the new modern awards objective?
  - b. Do any of the standard clauses negatively impact job security? If so, how?
  - c. Do any or any part of the standard clauses:
    - i. prevent or limit access to secure work?
    - ii. enhance access to secure work?
  
8. Are there variations to the standard clauses that could improve access to, or remove barriers to accessing, the standard clauses by employees who are vulnerable to job insecurity?

# Annexure A—Relevant recommendations

## Senate Committee on Job Security

- [First interim report](#): on-demand platform work in Australia, June 2021
- [Second interim report](#): insecurity in publicly-funded jobs, October 2021
- [Third interim report](#): labour hire and contracting, Nov 2021
- [The Job Insecurity Report](#), Feb 2022

## Senate Select Committee on Work and Care

- [Interim report](#), Oct 2022
- [Final Report](#), March 2023

Source	Recommendation
Senate Committee on Job Security <i>First interim report: on-demand platform work in Australia, June 2021</i>	<p><b>Recommendation 10 (June 2021)</b></p> <p>The committee recommends that the Australian Government empowers the Fair Work Commission (FWC) to provide pathways to permanency via arbitrations for casual conversion. Any disputes with regards to work status, contractual arrangements, or casual conversion should be able to be arbitrated via a low-cost, accessible process, whether via the FWC or another body, to ensure workers are able to practically enforce their rights, and both workers and employers can have matters adjudicated quickly.</p>
Senate Committee on Job Security <i>Second interim report: insecurity in publicly-funded jobs, October 2021</i>	<p><b>Recommendation 7 (Oct 2021)</b></p> <p>The committee recommends that the Australian Government commits to fully funding two weeks of paid pandemic leave, and up to three days of vaccination-related leave, for all workers in the aged care sector, regardless of their role or employment contract.</p>
	<p><b>Recommendation 18 (Oct 2021)</b></p> <p>The committee recommends the Australian Government works with unions, service providers and employers to amend relevant Awards to ensure the widespread practice of low minimum-hours part-time contracts is restricted, including consideration of:</p> <ul style="list-style-type: none"> <li>• specifying a minimum number of part-time hours that can be included in standard contracts;</li> <li>• requiring employers to pay over-time rates for hours worked over and above contracted hours;</li> <li>• including automatic mechanisms for review—for instance, if after six months an employee is consistently working above contracted hours, they should be offered the opportunity for the contract to be amended to reflect the actual hours worked; and</li> <li>• employees consistently working over 35 hours per week for 12 months or longer—regardless of the pattern of hours—should be offered full-time employment.</li> </ul> <p>The committee also recommends that these provisions should be easily enforceable and include anti-avoidance mechanisms.</p>

<b>Source</b>	<b>Recommendation</b>
	<p><b>Recommendation 23 (Oct 2021)</b>  The committee recommends that the Australian Government Department of Education, Skills and Employment works closely with universities, workers, experts, the National Tertiary Education Union, and relevant sector bodies, to design a system of casual and fixed-term conversion that would be appropriate for the higher education sector.  This system should include sector-appropriate definitions of casual and fixed-term work, and limit the use of casual and fixed-term employment to genuinely non-ongoing work.</p>
<p><b>Senate Committee on Job Security <i>Third interim report: labour hire and Contracting, Nov 2021</i></b></p>	<p><b>Recommendation 18 (Nov 2021)</b>  The committee recommends the Australian Government works with the Transport Workers' Union, the transport industry, and relevant stakeholders to establish an independent body, such as a National Transport Tribunal, which would:</p> <ul style="list-style-type: none"> <li>• review and set minimum standards for safety, pay and conditions for all operators and workers including contractors in the transport sector;</li> <li>• ensure minimum standards are enforceable on all supply chain and contracting parties, including by providing an effective enforcement regime and penalties for infringements;</li> <li>• adjudicate transport contract network disputes, including in relation to the unfair termination of engagements; and</li> <li>• defend the rights of all workers, including contractors, to join and be represented by their union and facilitate collective bargaining.</li> </ul>
<p><b>Senate Committee on Job Security <i>The job insecurity report (Feb 2022)</i></b></p>	<p><b>Recommendation 6 (Feb 2022)</b>  The committee recommends that the Australian Government urgently assesses the performance of the <i>Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021</i>. As the data collected through this inquiry suggests, the amendment has not had a positive impact on job security, and it should be repealed and replaced with a new statutory definition of casual employment that reflects the true nature of the employment relationship—rather than a definition which relies upon the employer's description of the relationship in an employment contract—and a new casual conversion provision.</p> <p><b>Recommendation 16 (Feb 2022)</b>  The committee recommends that the Australian Government amends the <i>Fair Work Act 2009</i> by inserting the words 'job security' and 'gender equity' into the principal Object of the Act (section 3), and adding 'job security' and 'gender equity' into the list of matters that need to be taken into account as part of 'The modern awards objective' (section 134) in the <i>Fair Work Act 2009</i>.</p>
<p><b>Senate Select Committee on Work and Care – Interim Report (October 2022)</b></p>	<p><b>Recommendation 2 (October 2022)</b>  6.20 The committee recommends that the Australian Government develop an analysis of care work classifications and wage structures to systematically address underpayments and lift wages in the care sector. Such an analysis should:</p> <ul style="list-style-type: none"> <li>• consider the variability and value of work across the care sector;</li> <li>• establish the interrelationships across care types; and</li> </ul>

Source	Recommendation
	<ul style="list-style-type: none"> <li>• recognise the inherent value of care work.</li> </ul> <p><b>Recommendation 3 (October 2022)</b> 6.35 The committee recommends that the Australian Government amend the <i>Fair Work Act 2009</i>, including section 65 of that Act, to:</p> <ul style="list-style-type: none"> <li>• make the right to request flexible work available to all workers and to remove the stigma attached to its use when confined to carers;</li> <li>• replace the 'reasonable business grounds' provision at section 65(5) under which employers can refuse a flexible working arrangement, with refusal only on the grounds of 'unjustifiable hardship';</li> <li>• introduce a positive duty on employers to reasonably accommodate flexible working arrangements;</li> <li>• require consultation with workers about flexibility requests; and</li> <li>• revise sections 738 and 739 of the Act to introduce a process of appeal to the Fair Work Commission, for decisions made by employers under section 65 refusing to allow flexible work arrangements on the grounds of unjustifiable hardship, or on 'reasonable business grounds'.</li> </ul> <p><b>Recommendation 5 (October 2022)</b> 6.54 The committee recommends that the Australian Government amend the <i>Fair Work Act 2009</i> to provide improved rostering rights for employees, and in particular working carers, by:</p> <ul style="list-style-type: none"> <li>• ensuring employers implement rostering practices that are predictable, stable and focused on fixed shift scheduling (for example, fixed times and days); and</li> <li>• amending section 145A of the Act to require employers genuinely consider employee views about the impact of proposed roster changes, and take the views of the employee, including working carers, into consideration when changing rosters and other work arrangements.</li> </ul>
<p><b>Senate Select Committee on Work and Care – Final Report (March 2023)</b></p>	<p><b>Recommendation 17 – sick, cares and holiday leave (March 2023)</b> 8.107 The committee recommends that the definition of 'immediate family' in the <i>Fair Work Act 2009</i> be amended and broadened for the purposes of an employee accessing carer's leave. In addition to the current definition, the following persons should be classified as 'immediate family':</p> <ul style="list-style-type: none"> <li>• any person who is a member of an employee's household, and has been for a continuous period of over 18 months;</li> <li>• any of the employee's children (including adopted, step and ex-nuptial children);</li> <li>• any of the employee's siblings (including a sibling of their spouse or de facto partner); and</li> <li>• any other person significant to the employee to whom the employee provides regular care.</li> </ul> <p><b>Recommendation 18 – 'Leave Buckets' – considering a separation between personal and carer's leave (March 2023).</b> 8.111 The committee recommends the Australian Government consider the adequacy of existing leave arrangements and investigate potential improvements in leave arrangements in the <i>Fair Work Act 2009</i>, including separate carer's leave and annual leave.</p>



Source	Recommendation
	<p><b>Recommendation 19 – ‘Leave Buckets’ – paid sick and annual leave for insecure workers (March 2023)</b>  8.115 The committee recommends the Australian Government request the Fair Work Commission to review access to and compensation for paid, sick and annual leave for casual and part-time workers.</p>
	<p><b>Recommendation 21 – roster justice (March 2023)</b>  8.125 The committee recommends, alongside its Interim Report recommendations to ensure employees have predictable, stable rosters, the Australian Government supports a review by the Fair Work Commission (FWC) of current industrial awards, to require employers to give advance notice of at least two weeks of rosters and roster changes (except in exceptional circumstances) and genuinely consider employee views about the impact of proposed roster changes and to accommodate the needs of the employee.</p> <p>8.126 The committee further recommends the Australian Government support a review by the FWC into current industrial awards, to ensure employees have a 'right to say no' to extra hours with protection from negative consequences.</p>
	<p><b>Recommendation 24 – flexibility (March 2023)</b>  8.142 The committee recommends the mandatory annual reporting of companies with over 20 000 employees in Australia to the Fair Work Commission on workplace practices to ensure roster justice and flexible working arrangements.</p> <p>8.143 The committee further recommends the mandatory collection of data by these companies of requests, including at store level, for roster changes and flexible working arrangements, and the percentage of changes to shifts that have been initiated by the employer within one week of the shift taking place. The data should:</p> <ul style="list-style-type: none"> <li>• include a collection of all requests, including those deemed 'informal', and detail whether these requests were approved, approved with modification, or denied;</li> <li>• provide information on the length of employment (up until the date of reporting) for that employee after their request was initially made; and</li> <li>• be provided in full to the Workplace Gender Equality Agency and published on the respective company's website.</li> </ul>
	<p><b>Recommendation 25 – Job security (March 2023)</b>  8.151 The committee recommends the Australian Government respond to the recommendations of the Senate Select Committee on Job Security as a matter of priority. The committee reiterates those recommendations and calls on the Australian Government to:</p> <ul style="list-style-type: none"> <li>• develop a new statutory definition of casual employment that reflects the true nature of the employment relationship and is restricted to work that is genuinely intermittent, seasonal or unpredictable; and</li> <li>• restrict the use of low base hour contracts, which can be 'flexed up' without incurring any pay penalty for additional hours worked beyond contract, and ensure permanent part-time employees have</li> </ul>

<b>Source</b>	<b>Recommendation</b>
	<p>access to regular, predictable patterns and hours of work. This could include implementing penalty rates for any hours worked over the contracted amount. For example, if an employee is contracted for 15 hours and their employer rosters them for more, they should be paid a penalty rate for hours worked beyond the contracted amount.</p> <p>8.152 The committee further recommends that the Australian Government develop clearly delineated statutory definitions of part-time and full-time employment and that these definitions, as well as a definition of casual employment, be inserted into the <i>Fair Work Act 2009</i>. These definitions should accurately reflect modern employment relationships and address employers' use of widely accepted legal loopholes, which can result in employment conditions that do not align with community expectations. In particular, the growing trend of part-time work to function as a form of casual employment without the benefit of casual loading.</p>

# Annexure B—Award-reliant employees in fixed-term employment

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A fixed-term employee is defined in the Australian Bureau of Statistics' Survey of Employee Earnings and Hours as those 'employed for a specified period of employment, and may be entitled to paid leave'.<sup>289</sup>

In general, fixed-term employment is not common for employees with pay set through awards, as shown in Table 1. Across all industries, 4.0 per cent of award-reliant employees are engaged on a fixed-term basis. This compares with 5.0 per cent across all employees.

Fixed-term employment is most common for award-reliant employees working in the Education and Training industry, at 12.8 per cent<sup>290</sup>, followed by professional, scientific and technical services (8.7 per cent). However, the small number of employees in fixed-term employment means that these estimates are less reliable than is typically the case for ABS data. Eight industries were found to have no award-reliant employees engaged on a fixed-term basis.

These industries vary in size and, for some, having pay set by awards is not common (third column of Table 1). The highest proportion of award-reliant employees are in Health care and social assistance, at 22.1 per cent and 40 per cent of fixed-term, award-reliant employees are employed in this industry. The second highest proportion is in Administrative and support services, which employs 15.4 per cent of all award-reliant, fixed-term employees.

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<sup>289</sup> Australian Bureau of Statistics, *Employee Earnings and Hours, Australia methodology*: [Glossary](#), 19 January 2022.

<sup>290</sup> Looking at modern award-reliant employees specifically, this value is a smaller 5.7 per cent. However, for the modern award method of setting pay, this remains a larger share than any other industry.

**Table 1: Award-reliant employees employed on fixed-term basis, by industry (2021)**

Industry	Fixed-term employment		Proportion of all award-reliant employees
	Share of all award-reliant employees in industry	Share of all fixed-term award-reliant employees across all industries	
	(%)	(%)	(%)
Mining	0	0	0.1
Manufacturing	0	0	5.2
Electricity, gas, water and waste services	0	0	0.3
Construction	0	0	4.1
Wholesale trade	1.9**	0.8	1.7
Retail trade	0.5**	1.4	12.5
Accommodation and food services	2.2**	10.7	19.5
Transport, postal and warehousing	0	0	2.3
Information, media and telecommunications	0	0	0.4
Financial and insurance services	0	0	0.9
Rental, hiring and real estate services	0	0	1.8
Professional, scientific and technical services	8.7*	4.6	2.1
Administrative and support services	5.2*	15.4	11.8
Public administration and safety	7.5*	6.9	3.7
Education and training	12.8*	10.4	3.3
Health care and social assistance	7.3*	40.0	22.1
Arts and recreation services	0.7**	0.4	1.9
Other services	3.8*	6.2	6.5
<b>All industries</b>	<b>4.0</b>	<b>100.0<sup>#</sup></b>	<b>100.0</b>

Note: \* Estimate has a RSE of between 25 per cent and 50 per cent and should be interpreted with caution. \*\* Estimate has a RSE of greater than 50 per cent and is considered too unreliable for general use. <sup>#</sup> Figures in this column do not sum to equal the total. RSEs refer to the estimated number of individuals with that employment type.

Source: ABS, *TableBuilder: Employee Earnings and Hours, Australia*, May 2021.

Table 2 shows the proportion of fixed-term employment across modern awards for which data are available. Supporting the industry analysis, it shows that the Educational Services (Post-Secondary Education) Award 2020 has the largest proportion of award-reliant employees in fixed-term employment (31.6 per cent). Also notable are the Social, Community, Home Care and Disability Services Industry Award 2010 (8.9 per cent) and the Restaurant Industry Award 2020 (7.5 per cent), both of which are among the 5 most common modern awards. Estimates for only 10 modern awards could be

cleared because of sufficient sample sizes, while observations were found for a further 20 modern awards that did not meet clearance requirements (indicated by np). For 13 of these modern awards, there were no observations in the survey on fixed-term employment contracts.

**Table 2: Fixed-term employment across modern awards, 2021**

<b>Award code</b>	<b>Award name</b>	<b>Fixed-term (%)</b>
MA000075	<i>Educational Services (Post-Secondary Education) Award 2020</i>	31.6*
MA000025	<i>Electrical, Electronic and Communications Contracting Award 2020</i>	12.9**
<b>MA000100</b>	<b><i>Social, Community, Home Care and Disability Services Industry Award 2010</i></b>	<b>8.9*</b>
<b>MA000119</b>	<b><i>Restaurant Industry Award 2020</i></b>	<b>7.5*</b>
MA000002	<i>Clerks—Private Sector Award 2020</i>	3.8**
MA000027	<i>Health Professionals and Support Services Award 2020</i>	3.6**
<b>MA000009</b>	<b><i>Hospitality Industry (General) Award 2020</i></b>	<b>1.8**</b>
MA000076	<i>Educational Services (Schools) General Staff Award 2020</i>	less than 10.2
MA000104	<i>Miscellaneous Award 2020</i>	less than 9.3
MA000010	<i>Manufacturing and Associated Industries and Occupations Award 2020</i>	less than 4.5
<b>MA000003</b>	<b><i>Fast Food Industry Award 2010</i></b>	<b>np</b>
<b>MA000004</b>	<b><i>General Retail Industry Award 2020</i></b>	<b>np</b>
MA000018	<i>Aged Care Award 2010</i>	np
MA000019	<i>Banking, Finance and Insurance Award 2020</i>	np
MA000020	<i>Building and Construction General On-site Award 2020</i>	np
MA000022	<i>Cleaning Services Award 2020</i>	np
MA000028	<i>Horticulture Award 2020</i>	np
MA000034	<i>Nurses Award 2020</i>	np
MA000036	<i>Plumbing and Fire Sprinklers Award 2020</i>	np
MA000058	<i>Registered and Licensed Clubs Award 2020</i>	np
MA000059	<i>Meat Industry Award 2020</i>	np
MA000077	<i>Educational Services (Teachers) Award 2020</i>	np
MA000080	<i>Amusement, Events and Recreation Award 2020</i>	np
MA000089	<i>Vehicle Repair, Services and Retail Award 2020</i>	np
MA000091	<i>Broadcasting, Recorded Entertainment and Cinemas Award 2020</i>	np
MA000094	<i>Fitness Industry Award 2020</i>	np

Award code	Award name	Fixed-term (%)
MA000099	<i>Labour Market Assistance Industry Award 2020</i>	np
MA000101	<i>Gardening and Landscaping Services Award 2020</i>	np
MA000118	<i>Animal Care and Veterinary Services Award 2020</i>	np
MA000120	<i>Children's Services Award 2010</i>	np
MA000005	<i>Hair and Beauty Industry Award 2010</i>	0
MA000012	<i>Pharmacy Industry Award 2020</i>	0
MA000016	<i>Security Services Industry Award 2020</i>	0
MA000038	<i>Road Transport and Distribution Award 2020</i>	0
MA000039	<i>Road Transport (Long Distance Operations) Award 2020</i>	0
MA000043	<i>Waste Management Award 2020</i>	0
MA000063	<i>Passenger Vehicle Transportation Award 2020</i>	0
MA000071	<i>Timber Industry Award 2020</i>	0
MA000073	<i>Food, Beverage and Tobacco Manufacturing Award 2020</i>	0
MA000083	<i>Commercial Sales Award 2020</i>	0
MA000084	<i>Storage Services and Wholesale Award 2020</i>	0
MA000103	<i>Supported Employment Services Award 2020</i>	0
MA000106	<i>Real Estate Industry Award 2020</i>	0

Note: np = not published due to insufficient observations \* Estimate has a RSE of between 25 per cent and 50 per cent and should be interpreted with caution. \*\* Estimate has a RSE of greater than 50 per cent and is considered too unreliable for general use. Modern awards in bold text are the top 5 most common modern awards. For some proportions based on a very low number of observations, the ABS has allowed for the result to be published as a range. For instance, the “9.3” shown in the result “less than 9.3 per cent” is calculated based on 10 observations, even though the number of observations employed on a fixed-term basis is less than 10.

Source: ABS, *Microdata: Employee Earnings and Hours, Australia, May 2021*

## Annexure C—Modern awards that contain the model term of standard clause

Code	Award title	Individual flexibility arrangements	Consultation (major change)	Consultation (rosters)	Dispute resolution	Termination of employment	Redundancy
MA000115	<i>Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000018	<i>Aged Care Award 2010</i>	✓	✓	✓	✓	✓	✓
MA000046	<i>Air Pilots Award 2020</i>	✓	✓	✓	✓	x	Additional provisions
MA000047	<i>Aircraft Cabin Crew Award 2020</i>	✓	✓	✓	✓	✓	Additional provisions
MA000048	<i>Airline Operations—Ground Staff Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000049	<i>Airport Employees Award 2020</i>	✓	✓	✓	Additional provisions	✓	✓
MA000092	<i>Alpine Resorts Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000060	<i>Aluminium Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000098	<i>Ambulance and Patient Transport Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000080	<i>Amusement, Events and Recreation Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000118	<i>Animal Care and Veterinary Services Award 2020</i>	✓	✓	✓	✓	x	✓
MA000114	<i>Aquaculture Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000079	<i>Architects Award 2020</i>	✓	✓	✓	✓	x	✓
MA000054	<i>Asphalt Industry Award 2020</i>	✓	✓	✓	✓	✓	✓

Code	Award title	Individual flexibility arrangements	Consultation (major change)	Consultation (rosters)	Dispute resolution	Termination of employment	Redundancy
MA000019	<i>Banking, Finance and Insurance Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000001	<i>Black Coal Mining Industry Award 2020</i>	✓	✓	✓	✓	x	x
MA000078	<i>Book Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000091	<i>Broadcasting and Recorded Entertainment Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000020	<i>Building and Construction General On-site Award 2020</i>	✓	✓	✓	Additional provisions	Additional provisions	x
MA000021	<i>Business Equipment Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000095	<i>Car Parking Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000055	<i>Cement, Lime and Quarrying Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000070	<i>Cemetery Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000120	<i>Children's Services Award 2010</i>	✓	✓	✓	✓	✓	✓
MA000022	<i>Cleaning Services Award 2020</i>	✓	Additional provisions	✓	Additional provisions	✓	Additional provisions
MA000002	<i>Clerks—Private Sector Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000045	<i>Coal Export Terminals Award 2020</i>	✓	✓	✓	✓	✓	x
MA000083	<i>Commercial Sales Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000056	<i>Concrete Products Award 2020</i>	✓	✓	✓	Additional provisions	✓	✓
MA000023	<i>Contract Call Centre Award 2020</i>	✓	✓	✓	Additional provisions	✓	✓
MA000110	<i>Corrections and Detention (Private Sector) Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000024	<i>Cotton Ginning Award 2020</i>	✓	✓	✓	✓	✓	✓



Code	Award title	Individual flexibility arrangements	Consultation (major change)	Consultation (rosters)	Dispute resolution	Termination of employment	Redundancy
MA000085	<i>Dredging Industry Award 2020</i>	✓	✓	✓	✓	Additional provisions	x
MA000096	<i>Dry Cleaning and Laundry Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000075	<i>Educational Services (Post-Secondary Education) Award 2020</i>	✓	✓	✓	✓	Additional provisions	✓
MA000076	<i>Educational Services (Schools) General Staff Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000077	<i>Educational Services (Teachers) Award 2020</i>	✓	✓	✓	✓	Additional provisions	Additional provisions
MA000088	<i>Electrical Power Industry Award 2020</i>	✓	✓	✓	Additional provisions	✓	✓
MA000025	<i>Electrical, Electronic and Communications Contracting Award 2020</i>	✓	✓	✓	✓	✓	Additional provisions
MA000003	<i>Fast Food Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000111	<i>Fire Fighting Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000094	<i>Fitness Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000073	<i>Food, Beverage and Tobacco Manufacturing Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000105	<i>Funeral Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000101	<i>Gardening and Landscaping Services Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000061	<i>Gas Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000004	<i>General Retail Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000026	<i>Graphic Arts, Printing and Publishing Award 2020</i>	✓	✓	✓	Additional provisions	✓	✓

Code	Award title	Individual flexibility arrangements	Consultation (major change)	Consultation (rosters)	Dispute resolution	Termination of employment	Redundancy
MA000005	<i>Hair and Beauty Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000027	<i>Health Professionals and Support Services Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000006	<i>Higher Education Industry—Academic Staff—Award 2020</i>	✓	✓	✓	✓	Additional provisions	✓
MA000007	<i>Higher Education Industry—General Staff—Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000008	<i>Horse and Greyhound Training Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000028	<i>Horticulture Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000009	<i>Hospitality Industry (General) Award 2020</i>	✓	✓	✓	✓	Additional provisions	✓
MA000064	<i>Hydrocarbons Field Geologists Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000062	<i>Hydrocarbons Industry (Upstream) Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000029	<i>Joinery and Building Trades Award 2020</i>	✓	✓	✓	✓	✓	Additional provisions
MA000067	<i>Journalists Published Media Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000099	<i>Labour Market Assistance Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000116	<i>Legal Services Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000081	<i>Live Performance Award 2020</i>	✓	✓	✓	✓	Additional provisions	✓
MA000112	<i>Local Government Industry Award 2020</i>	✓	✓	✓	Additional provisions	✓	✓
MA000117	<i>Mannequins and Models Award 2020</i>	✓	✓	✓	✓	✓	Additional provisions

Code	Award title	Individual flexibility arrangements	Consultation (major change)	Consultation (rosters)	Dispute resolution	Termination of employment	Redundancy
MA000010	<i>Manufacturing and Associated Industries and Occupations Award 2020</i>	✓	✓	✓	Additional provisions	✓	Additional provisions
MA000093	<i>Marine Tourism and Charter Vessels Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000050	<i>Marine Towing Award 2020</i>	✓	✓	✓	✓	X	✓
MA000086	<i>Maritime Offshore Oil and Gas Award 2020</i>	✓	✓	✓	✓	X	X
MA000030	<i>Market and Social Research Award 2020</i>	✓	✓	✓	Additional provisions	✓	✓
MA000059	<i>Meat Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000031	<i>Medical Practitioners Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000011	<i>Mining Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000104	<i>Miscellaneous Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000032	<i>Mobile Crane Hiring Award 2020</i>	✓	✓	✓	✓	✓	X
MA000033	<i>Nursery Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000034	<i>Nurses Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000072	<i>Oil Refining and Manufacturing Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000063	<i>Passenger Vehicle Transportation Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000035	<i>Pastoral Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000097	<i>Pest Control Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000069	<i>Pharmaceutical Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000012	<i>Pharmacy Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000036	<i>Plumbing and Fire Sprinklers Award 2020</i>	✓	✓	✓	✓	✓	X
MA000051	<i>Port Authorities Award 2020</i>	✓	✓	✓	✓	✓	✓

Code	Award title	Individual flexibility arrangements	Consultation (major change)	Consultation (rosters)	Dispute resolution	Termination of employment	Redundancy
MA000052	<i>Ports, Harbours and Enclosed Water Vessels Award 2020</i>	✓	✓	✓	✓	Additional provisions	✓
MA000074	<i>Poultry Processing Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000057	<i>Premixed Concrete Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000108	<i>Professional Diving Industry (Industrial) Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000109	<i>Professional Diving Industry (Recreational) Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000065	<i>Professional Employees Award 2020</i>	✓	✓	✓	✓	x	✓
MA000013	<i>Racing Clubs Events Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000014	<i>Racing Industry Ground Maintenance Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000015	<i>Rail Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000106	<i>Real Estate Industry Award 2020</i>	✓	✓	✓	✓	x	✓
MA000058	<i>Registered and Licensed Clubs Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000119	<i>Restaurant Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000039	<i>Road Transport (Long Distance Operations) Award 2020</i>	✓	✓	✓	✓	Additional provisions	✓
MA000038	<i>Road Transport and Distribution Award 2020</i>	✓	✓	✓	Additional provisions	✓	✓
MA000107	<i>Salt Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000068	<i>Seafood Processing Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000122	<i>Seagoing Industry Award 2020</i>	✓	✓	✓	✓	✓	x
MA000016	<i>Security Services Industry Award 2020</i>	✓	Additional provisions	✓	✓	✓	Additional provisions

Code	Award title	Individual flexibility arrangements	Consultation (major change)	Consultation (rosters)	Dispute resolution	Termination of employment	Redundancy
MA000040	<i>Silviculture Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000100	<i>Social, Community, Home Care and Disability Services Industry Award 2010</i>	✓	✓	✓	✓	✓	✓
MA000082	<i>Sporting Organisations Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000121	<i>State Government Agencies Award 2020</i>	✓	✓	✓	Additional provisions	✓	✓
MA000053	<i>Stevedoring Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000084	<i>Storage Services and Wholesale Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000087	<i>Sugar Industry Award 2020</i>	✓	✓	✓	Additional provisions	✓	Additional provisions
MA000103	<i>Supported Employment Services Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000066	<i>Surveying Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000041	<i>Telecommunications Services Award 2020</i>	✓	✓	✓	Additional provisions	✓	✓
MA000017	<i>Textile, Clothing, Footwear and Associated Industries Award 2020</i>	Additional provisions	✓	Additional provisions	Additional provisions	✓	Additional provisions
MA000071	<i>Timber Industry Award 2020</i>	✓	✓	✓	Additional provisions	Additional provisions	Additional provisions
MA000042	<i>Transport (Cash in Transit) Award 2020</i>	✓	✓	✓	Additional provisions	✓	✓
MA000102	<i>Travelling Shows Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000089	<i>Vehicle, Repair, Services and Retail Award 2020</i>	✓	✓	✓	✓	✓	✓

Code	Award title	Individual flexibility arrangements	Consultation (major change)	Consultation (rosters)	Dispute resolution	Termination of employment	Redundancy
MA000043	<i>Waste Management Award 2020</i>	✓	✓	✓	Additional provisions	✓	✓
MA000113	<i>Water Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000090	<i>Wine Industry Award 2020</i>	✓	✓	✓	✓	✓	✓
MA000044	<i>Wool Storage, Sampling and Testing Award 2020</i>	✓	✓	✓	✓	✓	✓
	<b>Number of modern awards that contain the standard term</b>	<b>121</b>	<b>121</b>	<b>121</b>	<b>121</b>	<b>113</b>	<b>113</b>