



Fair Work  
Commission

## Modern Awards Review 2023-24 (AM2023/21)

### Submission cover sheet

**Name:**

Gerard Dwyer National Secretary SDA

**Organisation:**

**Shop Distributive and Allied Employees' Association**

**Address:**

Street Address 1: Level 6  
Street Address 2: 53 Queen Street  
Suburb/City: Melbourne  
Postcode: 3000

**Contact details:**

(Please provide details of your preferred contact telephone number and/or email address)

Telephone: 03 8611 7000

Email: [katie@sda.org.au](mailto:katie@sda.org.au)

**Modern Award Review Stream:**

Arts and Culture: ☐

**Job Security:** ☐

Work and Care: ☒

Usability of awards: ☐

# **Modern Awards Review 2023-24**

## **AM2023/21**

### **Work and Care**

### **SDA SUBMISSION**

Date Submitted: 12 March 2024

Submitted by: Gerard Dwyer  
National Secretary-Treasurer



# Introduction

1. The Shop Distributive and Allied Employees' Association (**SDA**) is providing this submission to the Fair Work Commission (**FWC**) as part of a response to the FWC Modern Awards Review 2023-24 (**Awards Review**).
2. The SDA is one of Australia's largest trade unions with over 200,000 members working in a broad range of areas including retail, warehousing, online retailing, fast-food, hairdressing, beauty, pharmacy and modelling.
3. The majority of SDA members are low income, with 60% being women. Retail and food services are two of the three lowest industries for median weekly earnings. The retail industry employs one of the largest proportions of Australian workers, accounting for approximately 10% of the nation's workforce.
4. Fifty-six percent (56%) of retail workers are women, making it the third most feminised industry in Australia. Within retail the largest subdivision is 'Other Store-Based retailing', which is 64% female, and within that there are two highly feminised occupations, clothing retailing (85.5% female) and clothing retail managers (80.9% retail). Pharmacy Sales Assistants is also a highly feminised occupation with 87.6% female workers. The retail industry is followed by Accommodation and Food services (54%) which fast food workers fall under. The SDA also represents workers in Hairdressing (83.6% female) and Beauty (97.2% female) which is highly segregated by gender.<sup>1</sup>
5. When considering Award reliance, 67% of employees who are reliant on the Retail Award for the determination of their wages and conditions are women, which is higher than the proportion of women working in the Retail Industry (56%)<sup>2</sup>. This is also similar for the Fast Food Industry, with females making up 60.8% of Award reliant workers.<sup>3</sup> Award reliance for hairdressers (69.8%) and beauty therapists (69.7%) is also high.
6. In addition to the fact that most workers in the industries the SDA represents are women (who carry a disproportionate burden of care), research the SDA commissioned the UNSW Social and Policy Research Centre to conduct into how our

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<sup>1</sup> Cortis, N., Naidoo, Y., Wong, M. and Bradbury, B. (2023). Gender-based Occupational Segregation: A National Data Profile. Sydney: UNSW Social Policy Research Centre.

<sup>2</sup> Yuen K & Tomlinson J (2023), A profile of employee characteristics across modern awards, Fair Work Commission Research Report 1/2023, March, page 29

<sup>3</sup> *ibid*, page 35

members manage the challenges of work and care, showed that SDA members are significantly more likely than the national workforce to be worker carers, that is workers who also provide unpaid care to others, including children, elderly, ill and disabled members of their family and community.

7. The research also showed that the current regulatory framework and the resulting way that their work is organised is failing to support them to be both a worker and a carer. This is supported by the findings of the Senate Select Committee on Work and Care<sup>4</sup>.
8. On the 29th January 2024 the FWC issued a Discussion Paper: Work and Care (**Discussion paper**) to promote discussions with interested parties in relation to work and care. In the discussion paper, the FWC invited submissions to be made answering a series of discussion questions and any other relevant responses.
9. This submission of the SDA is intended to be a first step in the discussion and consultation process and aims to provide insights into how our members are currently managing their work and care, the impact that the current regulatory framework is having on this and how variations in the relevant Awards may address those impacts.
10. The SDA submission will draw largely from the 2021 report published by the University of NSW, Social Policy Research Centre *Challenges of work, family and care for Australia's retail, online retail, warehousing and fast food workers*<sup>5</sup> report (The Report) following a survey they undertook of SDA members in relation to their experience managing their work and care.
11. The research was the first of its kind and was based on survey responses of 6469 SDA members. It provides a comprehensive analysis of the extent and nature of the combination of work and care for SDA members, predominately in the retail sector.
12. The survey size was large and a representative sample of SDA members, providing a reliable insight into the issues impacting workers in the retail industry more broadly.
13. We will include references to the data and the commentary provided by our members in response to the survey throughout the submission. However, the report contained

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<sup>4</sup> The Senate Select Committee on Work and Care: Final Report

<sup>5</sup> Cortis, N., Blaxland, M., and Charlesworth, S. (2021). *Challenges of work, family and care for Australia's retail, online retail warehousing and fast food workers*. Sydney: UNSW Social Policy Research Centre.

the following overview of the results:

*Findings show that as well as making important economic and social contributions through their paid work, SDA members make valuable contributions through the unpaid labour they provide as parents, and as carers to children and adults in their families and communities. Yet these social and economic contributions are poorly recognised and accommodated in their working lives.*

*The data shows that:*

- ***SDA members lack genuine choice about their working times and childcare arrangements and require better support structures, including access to responsive childcare services that recognise their needs, to ensure they have meaningful opportunities to shape their working and caring lives.***
- ***Industrial relations settings and employer practices are limiting the choices and opportunities available to SDA members. Rostering and pay are shaped too strongly around employers' agendas of profitability and cost minimisation.***
- ***The ways work is organised exacerbates difficulties faced by workers needing to organise their work and family lives, and find time for care. This impacts on the children of retail workers, many of whom cannot access early education and have constrained opportunities to fully participate in other aspects of social and community life.***

***Changes are needed at the level of industrial relations policy, and within employing organisations and local workplaces. Policy and regulatory changes should be aimed at promoting decent pay, job security, predictability of shifts, employees' control over work times, access to reasonable shift lengths, genuine choices about work days and times, and to ensure workers can make schedule adjustments without fear of repercussions.***

*[Emphasis added]*

14. Changes to Awards are a critical element to achieving the necessary changes to industrial relations settings, as recommended by The Report.

15. As found by the Senate Committee into Work and Care and supported by the results from the research conducted of SDA members *‘the 19th century social contract that provided workers and their households a living income in exchange for their work, is no longer fit for a world where so many workers have caring responsibilities and where so many women join men at work’. ‘It is time for a new right to care, alongside the right to work. In a world that increasingly relies upon the paid work of its citizens who are also carers, it is time for a new social contract around work and care—one appropriate to the 21st century’<sup>6</sup>.*
16. The new social contract must include a review and change to Awards to ensure they match the modern world of work and care that workers and businesses are operating in, and to ensure Awards continue to meet the Modern Awards objectives.
17. Awards are critical to a new social contract, particularly in industries such as Retail, Fast Food, Hair Dressing and Beauty and Pharmacy where Award reliance is high. The Retail Award accounts for 11% of Award covered workers in Australia and the Fast Food Award accounts for 7.9%<sup>7</sup>.
18. Where Enterprise Agreements do exist, they are largely based on their underpinning Awards which extends the reliance on the minimum terms and conditions contained in them.
19. The SDA also notes that the work and care stream of the Award Review is intrinsically linked to the streams that are dealing with Job Security and Gender Equality and that this review must be undertaken with consideration of the new Modern Award Objectives in the Fair Work Act (**FW Act**), Section 134(1)(aa) the need to improve access to secure work across the economy; and Section 134(1)(ab) the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and providing workplace conditions that facilitate women's full economic participation.
20. The Discussion Paper reflects that *‘Women make up 71.8 per cent of those who identify as primary carers.[49] 12.3 per cent of all women identify as informal carers, compared to 9.3 per cent of all men. Caring expectations can effectively impose a*

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<sup>6</sup> The Senate Select Committee on Work and Care: Final Report, page xxiv

<sup>7</sup> Yuen K & Tomlinson J (2023), A profile of employee characteristics across modern awards, Fair Work Commission Research Report 1/2023, March, page 17

*‘double day’ or ‘second shift’ on top of existing paid work, with women bearing most of this additional labour’.*

21. The Discussion Paper also provides many useful analyses of the terms and conditions contained in a range of Awards, some of which cover female dominated workforces and some covering male dominated workforces. There are stark differences in the terms and conditions, particularly in relation to spread of hours, overtime, and rostering, when comparing female dominated to male dominated Awards. This is resulting in less secure employment, more unpredictable and precarious working time arrangements and lower incomes, particularly for worker carers and women who work.
22. Rather than the differences being based on the operation of the industries it is more reflective of the undervaluation of the industries and occupations that have been traditionally female.
23. This submission begins with an introductory section outlining the amount of care that SDA members combine with work, followed by a response to the questions posed in the Discussion paper and how the relevant Awards could be varied to improve the impact the current workplace relations setting is having on the challenge workers experience as worker carers.
24. The SDA submission will focus on the Awards that SDA members are predominately covered by including the:
  - General Retail Industry Award 2020 (GRIA)
  - Fast Food Industry Award 2020 (FFIA)
  - Hair and Beauty Industry Award 2020 (HBIA)
  - Pharmacy Industry Award (PIA)
  - Storage Services and Wholesale Award 2020 (SSWA)
  - Vehicle Repair, Services and Retail Award 2020 (VMRSR)
25. While we make some recommendations regarding specific Award variations, given this is in the context of a broad review, we will also be making submissions in relation to broad issues that were raised in the Discussion Paper and other issues we identify that we believe the Review should consider with regard to improving Awards to enable

workers to have access to secure, stable and predictable work so they can have genuine choice and support to better arrange the care they provide.

26. This review should be a reimagining of what decent work and work arrangements that support working carers looks like, and a rebalance of the power and control that is currently too far in favour of employers in many Awards, particularly female dominated Awards. Rather than a contest about specific Award variations and a tinkering of what is in place now, it should be a broader consideration of the minimum standards that should be contained in Awards to support worker carers and the contribution they make to workplaces, society and the economy.



# Recommendations

## Recommendation 1

In the Awards relevant to SDA members, a **weekly minimum for Part time work should be 15 hours** at least and to ensure the hours are not spread over 5 days, the minimum shift provision should be increased to 4 hours.

## Recommendation 2

Vary the Awards relevant to SDA member coverage which allow for the agreement to work additional 'ordinary' hours above base contract hours to include either payment at overtime rates or alternatively, payment as ordinary hours (with leave accrual) paid at ordinary hourly rates plus an additional penalty of at least 25%.

## Recommendation 3

Awards be varied to include a positive obligation on employers to provide employees with a 'right to say no' to additional shifts, without repercussion.

## Recommendation 4

Include a strengthened **right to elect to convert regular additional hours** worked by a part-time employee to their guaranteed hours (base contract hours) in all Awards. The provision should be strengthened by including:

- (a) a right to elect to convert regular additional hours to permanent hours; and
- (b) a positive obligation for an employer to convert the hours unless they can demonstrate the hours were not regular and there would be an unjustifiable hardship for them to provide the hours on a permanent basis; and
- (c) a worker should be able to elect to convert after six months of working regular additional hours; and
- (d) that the process to resolve a dispute include arbitration at the request of either party rather than by consent.

## Recommendation 5

Include a **Right to become full time** when working an average of 35 hours or more per week on a reasonably regular basis.

### **Recommendation 6**

Awards should contain roster change mechanisms by consent or mutual agreement only.

Where an Award can't be varied to include roster change by mutual agreement only, it should be varied so that where the employer proposes a roster change they must give 28 days' notice, and if the worker cannot work the proposed roster, the worker has a right to raise a dispute to the FWC for conciliation and arbitration (by either party not by consent) and the status quo (original roster) continues to be worked until the dispute is resolved

### **Recommendation 7**

Awards should require that a regular roster be agreed between the employer and full-time employee at the time of commencement.

### **Recommendation 8**

Awards should contain roster change mechanisms for full-time employees by consent or mutual agreement only.

Where an Award can't be varied to include roster change by mutual agreement only, it should be varied so that where the employer proposes a roster change they must give 28 days' notice (rather than 7 or 14), and if the worker cannot work the proposed roster, the worker has a right to raise a dispute to the FWC for conciliation and arbitration (by either party not by consent) and the status quo (original roster) continues to be worked until the dispute is resolved.

### **Recommendation 9**

Awards should remove the ability to change a full-time roster with 48-hours' notice or alternatively include the right to say no.

### **Recommendation 10**

Vary Awards to include notice periods for a roster change and an appropriate notice period for the notification of a roster for all workers including casuals.

### **Recommendation 11**

The FWC should consider the proliferation of computerised rostering systems and technology more broadly, and its impact on workers and whether protections are needed in Awards to ensure they continue to meet the Modern Awards Objectives.

### **Recommendation 12**

Awards should contain a Right to Care clause that provides a positive obligation on the employer to provide employees with a roster that accommodates their caring responsibilities.

### **Recommendation 13**

Remove IFA provisions from Awards.

### **Recommendation 14**

If the IFA provision is not removed from Awards, vary the standard term by:

- Relocating the final subclause of the standard term as the first, and supplementing it to alert readers to the NES right to request a flexible working arrangement;
- Ensuring that an employer's "proposal" for an IFA includes a draft of the IFA;
- Ensuring that an employer's "proposal" for an IFA includes a statement to the effect that the employee is free to choose to agree or not agree to the proposal; discuss, seek advice or be represented in relation to the proposal; and put forward an alternative;
- Ensuring that an employer's "proposal" for an IFA, and any IFA made, states the employer's assessment as to whether the IFA will result in any improvement to the regularity and predictability of the employee's work and income;
- Referring to the capacity to bring disputes under the dispute resolution procedure and to the Commission's power to conciliate, mediate, express an opinion or make a recommendation; and
- Providing a capacity for the Commission to review an IFA and express an opinion about whether it continues to meet the BOOT and whether any expectations concerning improvements to regularity and predictability of hours and income had been realised.

### **Recommendation 15**

Extend right to change working arrangements to all workers regardless of the circumstances.

If the criterion for access is not expanded to all workers, Awards should be amended to ensure that carers who provide regular care to a child school age or younger are eligible to change their working arrangements, not just the parent of the child (e.g. to ensure grandparents/siblings/aunts/uncles and others captured).

### **Recommendation 16**

Amend Awards so that the only way an employer can refuse a change to working arrangements is by demonstrating it will result in 'unjustifiable hardship' rather than as a result of 'reasonable business grounds'.

### **Recommendation 17**

Increase the minimum shift payment under the Awards SDA members are covered by to 4 hours for all employees.

### **Recommendation 18**

Include a minimum shift for full-time employees (of at least 4 hours) in Awards where minimum shifts for full-time employees are not currently included.

### **Recommendation 19**

Amend breaks provisions in the Retail, Fast Food, Pharmacy and Hair and Beauty Awards to include a paid break to all employees for every shift worked regardless of shift length.

### **Recommendation 20**

All Awards should contain a relevant span of hours and all Awards currently containing a span which extends beyond standard Monday to Friday daytime hours should be reviewed with regard to the impact on a workers right and ability to care, security of hours and rostering, and in relation to gender equality.

### **Recommendation 21**

Where Awards retain expansive hours, they should be reviewed to determine if they appropriately recognise and compensate for rostering outside of standard Monday to Friday daytime hours, e.g., overtime, shift rates, allowances and leave.

### **Recommendation 22**

Consider varying Awards to restrict an employer from requiring employees to work outside of agreed available hours.

### **Recommendation 23**

Consider including an allowance for part-time employees who are required to give availability for access to additional hours.

#### **Recommendation 24**

Allowances relating to travel time and costs in Awards should extend to travel between work sites.

#### **Recommendation 25**

Awards should be varied so that when employees take annual leave, they get their ordinary hourly rate (including penalties) plus a 17.5% annual leave loading.

#### **Recommendation 26**

The minimum entitlement under Awards for Annual Leave should be increased to 5 weeks (and 6 weeks for shift workers).

#### **Recommendation 27**

The minimum standard for the payment of personal leave in Awards should be at an employee's full rate of pay (inclusive of penalties and loadings).

#### **Recommendation 28**

The evidence requirements for the purpose of carers leave where an employee is caring for a person who is frail or aged or has a long-term disability or illness, should be changed so they can provide evidence for an enduring period of time rather than requiring evidence on each occasion.

#### **Recommendation 29**

Extend the definition of immediate family for the purpose of accessing paid personal leave to include care provided to a person significant to the employee who relies on them for care.

#### **Recommendation 30**

Include a right to unpaid leave for workers who need extended leave to care for an older person or someone with a disability or temporary or terminal illness, in Awards, with a right to return to work at the end of the unpaid period. This should be available after genuine consultation regarding options for continued work have been exhausted and the employee elects to take unpaid leave.

#### **Recommendation 31**

Awards should be varied to include a discrete entitlement for 10 days carers leave for all employees for the purpose of providing care to someone in an employee's immediate family

or household or someone of significance to the employee for whom they are relied on to provide care.

This should be in addition to Personal Leave which could be used when an employee is ill or injured, or when carer leave has been exhausted and they need to provide care to someone defined under the carer leave provision.

### **Recommendation 32**

Paid personal leave under Awards should be extended to casual employees.

### **Recommendation 33**

Include in all Awards provision for paid Ceremonial Leave and other provisions to better reflect and support the needs of Aboriginal and Torres Strait Islander workers.

### **Recommendation 34**

Consider the following:

- Reducing full-time to 35 hours per week (at current weekly rates)
- Introducing a 4-day week

### **Recommendation 35**

Under parental leave:

- (a) Inclusion of paid breaks for the purpose of breastfeeding and/or expressing and right to appropriate facilities.
- (b) Periods of parental leave (paid and unpaid) counted as service for accrual purposes.
- (c) Paid pre-natal/pre-adoption/pre-placement leave.
- (d) Grandparental Leave - which would provide for an eligible employee to access 52 weeks unpaid leave for each grandchild during the period up until the child's 5th birthday, with 12 weeks paid.

## SDA members are workers and carers

27. The Challenges of work, family and care for Australia's retail, online retail, warehousing and fast food workers<sup>8</sup> report (The Report) found that 55% of survey respondents provide regular care to a child or an adult, however this was higher for women (60%) than men (43%)<sup>9</sup>. The most common form of care was for a child under 18 years (39%) and 30% of all participants were parents of a child under 18. Older SDA members also provide care to grandchildren (17%) and young SDA members are providing regular care to siblings and adults with disability or long-term illness<sup>10</sup>.
28. Hairdressers and beauty therapists made up only a small proportion of respondents to the survey, however, the Gender-based Occupational Segregation Report found that 39% of hairdressers and 41% of beauty therapists have unpaid childcare responsibilities<sup>11</sup>.
29. SDA members regularly provide unpaid care or assistance to an adult, such as an older person, person with disability or health condition<sup>12</sup>:
- 17% said they provided care to an older person,
  - 10% provided care to someone with a long-term illness or health condition, and
  - 9% provided care to a person with a disability.

Provision of eldercare is highest among SDA members aged in their early 50s, when around 27% of SDA members are involved in providing care<sup>13</sup>.

30. SDA members care for others at disproportionately high rates when compared to the national population:

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<sup>8</sup> Cortis, N., Blaxland, M., and Charlesworth, S. (2021). *Challenges of work, family and care for Australia's retail, online retail warehousing and fast food workers*. Sydney: UNSW Social Policy Research Centre.

<sup>9</sup> Ibid, page 20

<sup>10</sup> Ibid, page 20

<sup>11</sup> Cortis, N., Naidoo, Y., Wong, M. and Bradbury, B. (2023). *Gender-based Occupational Segregation: A National Data Profile*. Sydney: UNSW Social Policy Research Centre, page 102

<sup>12</sup> Ibid, page 22

<sup>13</sup> Ibid, page 23

	Australia (ABS)	SDA survey participants
Care for an older person or person with disability	11%	24%
Sole parents	14% of families	25% of parents
Parent of a child with a disability	7.7% (children <15 with a disability)	16% (children <18 with a disability)
Young carer's (<25, provide regular care to elderly, person with disability)	5.6%	13%

31. SDA members provide care to a range of adults<sup>14</sup>:

- 18% care for an elderly, ill or disabled parent or parent in-law
- 4% care for a partner or spouse
- 4% care for a grandparent
- 3% care for a sibling
- 2% care for an adult child

32. Many SDA members provide care to a child or children while also caring for an older person. 16% of parents with a child aged 18 and under, and 12% of parents with a child aged 5 or under, were also providing regular elder care<sup>15</sup>.

33. Young SDA members also provide care for older people and adults with a disability or long-term health condition. Thirteen percent of young SDA members up to age 25 provided regular unpaid care to an older person, person with disability or person with a long-term health condition:

- 11% of those aged 20 or under, and
- 15% of those aged 21 to 25.

These figures were similar to the proportions of SDA members in older age groups providing care.

34. Young SDA members also care for children. 'Among those aged 20 or under, 14% provided regular unpaid care for a younger sibling'<sup>16</sup>.

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<sup>14</sup> Ibid, page 22

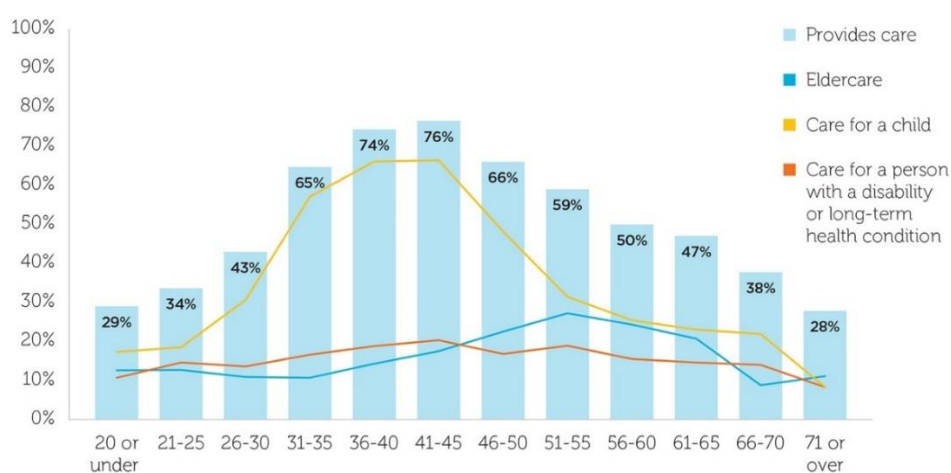
<sup>15</sup> Ibid, page 22

<sup>16</sup> Ibid, page 20



35. The proportion of young SDA members with care responsibilities is relatively high. The 2016 Census found that among people aged 15 to 24, 5.6% were young carers, providing care to an older person or adult with a disability or long-term health condition<sup>17</sup>.
36. The following graph shows the proportion of surveyed members who regularly provide care by age and the type of care they provide. This demonstrates the enormous amount of unpaid labour SDA members contribute to the care of others over their working lives.

**Figure 4.2 Proportion of participants who regularly provide care by age and type of care provided**



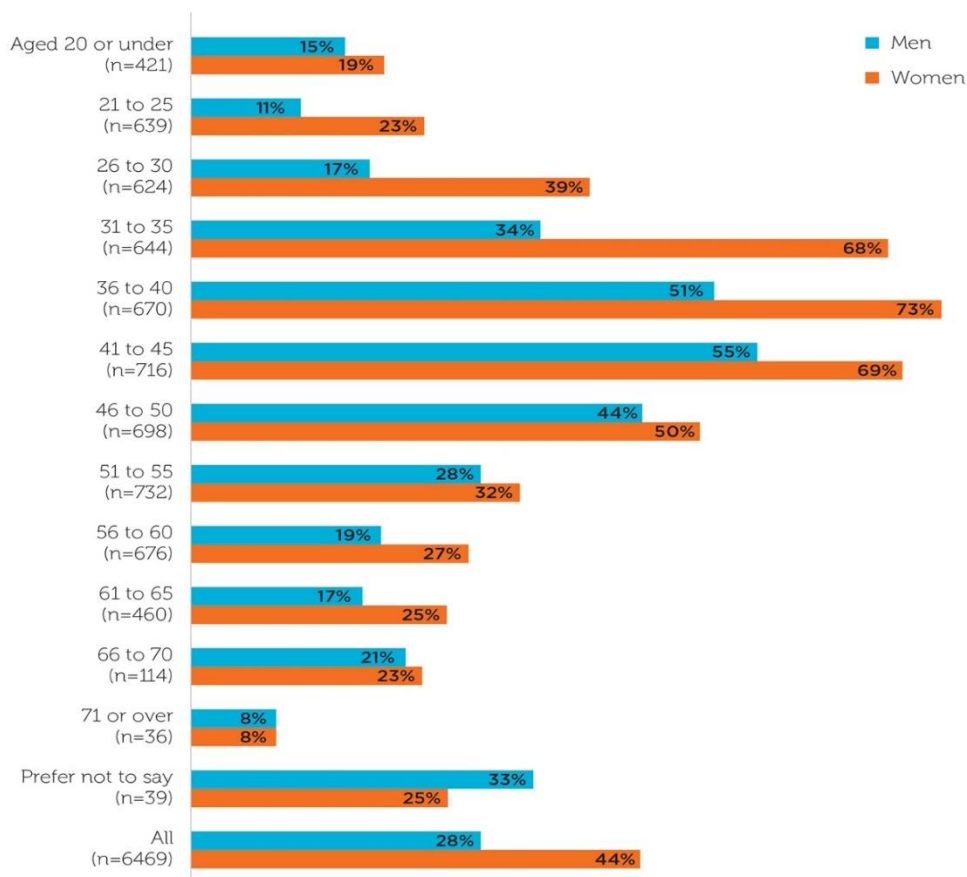
37. Care is gendered. More women (60%) surveyed than men (43%) provide regular care to a child or an adult<sup>18</sup>. This is more pronounced when considering the care of children, especially when children are young, and mothers are in the 26-45 years age group<sup>19</sup>:

<sup>17</sup> Ibid, page 23

<sup>18</sup> Ibid, page 20

<sup>19</sup> Ibid, page 21

**Figure 4.1 Proportion of men and women who regularly provide care to a child aged under 18 in or outside their household by employee age**



38. The report found that the lack of support for workers with caring responsibilities has a disproportionate impact on women as they shoulder a higher burden of care, without the appropriate workplace regulations and supports. This is a barrier to women's workforce participation, as women are unable to access suitable and sufficient working times and career opportunities. This is having a negative impact on gender equality and is an indicator that the current Award minimum protections are not meeting the new Modern Awards Objective under Section 134(1)(ab) particularly in relation to providing workplace conditions that facilitate women's full economic participation.
39. As demonstrated in the Report, poor workplace supports, coupled with insecure, unpredictable, and often punitive rostering practices, is having a significant impact on the ability to participate in paid work, earn a relatively good level of income and save for retirement, particularly for worker carers.
40. Respondents to the survey typically reside in low-income households. '52% of respondents live in households with post-tax income of less than \$1000 per week. This

was the case for 32% of couple parents and 80% of sole parents, and 56% of workers who were not currently parenting a child aged under 18 (see Appendix Table A.10)<sup>20</sup>.

41. The care provided by SDA members contributes an enormous amount to our society and economy, but often comes at great personal cost. The current workplace relations settings are having a detrimental impact on the ability for carers to fully participate in paid work, which is impacting on their ability to earn a decent individual and family income and also impacting on longer term economic outcomes. It also significantly impacts the health and wellbeing of workers and their families.
42. This member story conveys the severe impact that combining work and care has on the well-being of workers and their families:

*"My manager doesn't care that I'm a single mother and that my girls have to hang around outside the school for 1 hour and 10 minutes for me to pick them up. She also didn't care when she changed my roster and my daughters couldn't see their psychologist any more.... and she didn't care that my girls had to give up their sports. This has affected my and my girls' mental health and it affects our daily lives. Our lives are very stressful because of my work hours and my girls suffer because they only have me and they always miss out, and my boss couldn't care less."*

Sole mother, permanent part-time

43. This demonstrates that the regulation of working time arrangements in Awards are not meeting the Modern Awards Objectives 134(1)(a) in relation to the relative living standards of the low paid.
44. The Report found that the combination of caring for a child and working has significant impacts on the well-being of parents and children, However, the widespread discrimination, poor workplace cultures and lack of workplace supports is not just confined to parents; it's felt by all carers.
45. Combining work and care also impacts on the financial wellbeing of SDA members because it impacts on their ability to participate in paid work, leading to lower income and lower retirement outcomes. This is exacerbated by the lack of workplace support and the way in workers are employed and work time is scheduled. The rostering provisions in the Retail, Pharmacy and Hair and Beauty Awards in particular, are one-

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<sup>20</sup> Ibid, page 82

sided in relation to the control of hours in the favour of employers - workers have little control.

46. The Report found that 'Industrial Relations settings and employer practices are limiting the choices and opportunities available to SDA members. Rostering and pay are shaped too strongly around employers' agendas of profitability and cost minimisation'<sup>21</sup>. There needs to be a rebalance of industrial relations settings to ensure that workers have access to secure jobs with predictable and reliable hours of work that they have control over and genuine choice about the days and times they work to ensure they have a 'Right to Care' in the way they need and choose to do.

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<sup>21</sup> Ibid, page 2

# Discussion Paper Questions

47. The SDA will address the questions from the Discussion paper that are relevant for the Awards that apply to SDA members.

**Question 1: Part-time: Are there any specific variations to part-time provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?**

48. Part-time work is a dominant feature of the Award covered workforce. 'Almost two-thirds of employees across all modern awards worked part-time hours'<sup>22</sup>.
49. In retail, almost four in five work part-time hours, which is higher than the average across all modern award-reliant employees 65.2%, and only 21.8% are full-time, which is significantly lower than the 34.8% average across all Awards.<sup>23</sup>
50. While we don't have figures on the number of hours part-time workers work across the retail industry, data on clothing retailing shows that sales workers are more likely to be working less than 19 hours per week (67.2%).<sup>24</sup>
51. The FFIA is characterised by high casualisation (70.6% are casuals), and a significantly higher number of workers working part-time hours (86%) than the average (65.2%), and minimal numbers of full-time workers (14%).
52. The hairdressing and beauty industry also employs large numbers of part-time workers, just over half of Beauty Therapists were working part-time (51.6%), along with 41.6% of Hairdressers.<sup>25</sup>

Minimum hours for part-time work

53. One of the biggest issues facing our members is insecure work. Insecure work is more than just casual employment. Over the past decade or so we have seen a 'casualization' of the permanent part-time workforce. It is common in the retail and fast-food industries to be offered permanent part time contracts which provide between 6-10 hours per week (low-base hours contracts) with fluctuating rosters and offers of additional hours. The

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<sup>22</sup> Yuen K & Tomlinson J (2023), A profile of employee characteristics across modern awards, Fair Work Commission Research Report 1/2023, March, page 21

<sup>23</sup> Ibid, page 29

<sup>24</sup> Cortis, N., Naidoo, Y., Wong, M. and Bradbury, B. (2023). Gender-based Occupational Segregation: A National Data Profile. Sydney: UNSW Social Policy Research Centre, page 55

<sup>25</sup> Ibid, page 58

additional hours are unpredictable and fluctuate in the number of hours offered and when the hours are to be worked.

54. The 'low base plus additional hours' permanent part-time model that we typically see is like the 'hunger games' of rostering where workers are purposefully kept on low base hours contracts with the promise of more. This model of rostering places workers under pressure to have to accept all shifts, regardless of the late notice and unpredictability; comply with all managers requests; and not ask for any support so that they don't lose the opportunity of being offered more shifts, because it's incredibly challenging to have to survive on their base hours each week.
55. The additional challenge our members face with low base contract hours is very poor working time security with many members working non-standard hours, with unstable and unpredictable work times (and incomes) and a lack of control or consultation over their work times. This is a particular problem when you have base hours fixed but additional hours potentially fluctuating from roster to roster. While this affects everyone, these issues are exacerbated for workers who need to provide care.<sup>26</sup>
56. Low base hour contracts and constantly changing rosters make providing care to others incredibly difficult and stressful for workers, but also those they care for. Insecure, unstable and unpredictable work time arrangements also impacts on our members ability to access other supports which should be available to assist them to manage care responsibilities such as formal childcare.
57. This model of low base part-time contracts with the offer of variable additional hours has created a second class of casual worker in the retail industry, where workers are subject to the same insecurity and unpredictability of working times and incomes.
58. The typical model of extremely low levels of full-time employees and high levels of part-time employees on low base contracts is in a context of a very broad spread of hours in the GRIA and broad operating hours within business. This should give business the capacity to arrange work on a more permanent, higher base hours roster in a predictable way, but the Award doesn't provide the appropriate protections to require this.

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<sup>26</sup> Cortis, N., Blaxland, M., and Charlesworth, S. (2021). *Challenges of work, family and care for Australia's retail, online retail warehousing and fast food workers*. Sydney: UNSW Social Policy Research Centre, page 60

59. A 2016 study Controlling routine front line service workers: an Australian retail supermarket case found that ‘Short-hours contracts dominated, as 56 per cent of checkout staff worked fewer than 15 hours per week’<sup>27</sup>.
60. Underemployment is also a common theme of the Report, reflecting the predominance of unpredictable, insecure rosters and lack of workplace support for workers care responsibilities. A third (34%) of participants either agreed or strongly agreed with the statement “If my hours were more predictable, I would be able to work more”, while this was much higher among those employed casually (53%) of those employed on a permanent basis, 29% also agreed with the statement. This is critical when considering that only 36% of participants agreed or strongly agreed that “I work enough hours to make a living”. This was lower for sole parents (25%) (Appendix Table A.11). Women were also less likely to agree, and more likely to disagree, compared with men (Appendix Table A.12).
61. Underemployment and reliance on unpredictable additional shifts, affects workers across the life course. The Report found that substantial proportions in each age group do not agree that they work enough hours to make a living. Underemployment is not just an issue affecting casuals (20%), it also impacts permanent workers too. (57%)<sup>28</sup>.

*Shifts regularly get added or changed without any communication, meaning I have had to put my family out on several occasions, leaving them to fend for themselves. I’ve had to cancel medical appointments [without] notice because shifts have altered. On the rare occasion I’m actually asked to do extra shifts and I have to turn them down, I’m made to feel like a disappointment to the boss and then am asked less and less to do more hours. But my roster changes without notice more often. They force us into doing extra or different shifts. We are also only given access to the weeks roster (starting Monday) from the previous Thursday morning, giving us a very short amount of time to know the following weeks roster, which makes other commitments difficult to arrange.*

Woman, elder carer, permanent part-time

*No notice when needed for an extra shift. This morning I had 45mins notice & sometimes extra shifts are added without been asked.*

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<sup>27</sup> Price, Robin, *Controlling routine front line service workers: an Australian retail supermarket case*, Work, employment and society 2016. Vol 30(6) 915-931, page 922

<sup>28</sup> Ibid, page 82

Woman, carer, permanent part-time

*Relying on being called in is a little stressful. With the lack of hours, I try to prepare my household's day so if I need to leave unexpectedly, everything is set & it will make everyone less anxious & prevent them contacting me when I'm working.*

Woman aged 25 or under, carer, casual

*I have repeatedly advised my manager that I am a carer and being given no notice on roster changes is very stressful.*

Woman, carer of person with long term illness, permanent part-time

*I work Sunday and Monday evenings so I can receive penalties this helps me be able to care for my mum and my children.*

Partnered mother, elder carer, permanent part-time

*It affects the family most when the roster changes cause my income to decrease*

Partnered father, permanent full-time

62. The minimum weekly hours for a part-time employee under the GRIA and FFIA is 3 hours. This minimum arose from previous legislative reforms including Award Simplification, which removed the higher weekly minimum hours that did exist across Retail and Fast-Food Awards (ranging from 9 hours to 20 hours).
63. Having only a 3-hour minimum per week is not consistent with the promotion of job security and does not provide workers with access to a proper and decent income. Low base part-time hours are also creating job insecurity and unpredictability in rosters where workers are forced to accept shifts rostered in addition to their base hours to make a wage they can live on and support family if they have dependents.
64. Workers want more hours guaranteed and a stable and predictable roster that is not subject to variation. This is particularly important for worker carers, who need predictable rather than flexible rosters so they can organise their care around predictable work hours.



65. Underemployment can also be seen in the increasing number of workers working multiple jobs. A recent report<sup>29</sup> from the Australian Bureau of Statistics showed a large number of workers in retail (especially women) and food services are working multiple jobs.

Levels and rates of multiple job-holding, by sex, by industry

Industry	Multiple job-holding rate (%)	Males	Females
Health care and social assistance	7.7	33,100	124,100
Education and training	7.0	24,700	59,100
Accommodation and food services	7.8	42,200	55,100
Retail trade	5.9	36,300	51,500
Administrative and support services	9.4	51,400	38,900
Professional, scientific and technical services	5.0	32,900	32,200
Public administration and safety	5.4	19,700	21,700
Other services	5.4	13,100	17,200
Agriculture, forestry and fishing	9.3	26,300	15,700
Arts and recreation services	8.8	10,900	13,800
Manufacturing	4.3	26,500	12,800
Construction	5.6	59,100	12,600
Financial and insurance services	4.2	9,700	10,900
Transport, postal and warehousing	5.1	26,100	10,500
Wholesale trade	4.2	14,900	10,300
Rental, hiring and real estate services	5.7	8,800	9,500
Information media and telecommunications	5.3	5,700	4,900
Mining	5.4	9,500	2,200
Electricity, gas, water and waste services	3.6	3,600	1,300

Source: Australian Bureau of Statistics, More people working two or more jobs, with women and younger workers more likely 8/09/2023

66. The prevalence of workers having to work multiple jobs in industries such as Retail reflects the lack of sufficient, secure and predictable hours being offered to workers. Awards like the GRIA and FFIA do not provide the appropriate minimum standards and protections to promote the engagement of workers on permanent meaningful contracts of employment.
67. The data from the report demonstrates there is a willing and able workforce being underutilised because of the insecure and unpredictable ways their work is arranged and rostered.

<sup>29</sup> Australian Bureau of Statistics (8 September 2023), [More people working two or more jobs, with women and younger workers more likely](#), ABS Website, accessed 1 February 2024.

68. The SDA proposes that in the Awards relevant to its members, a weekly minimum for Part time work should be 15 hours at least. Access to meaningful, secure and stable working time arrangements will provide greater schedule control which is vitally important to worker carers so they can arrange their caring responsibilities to suit their work schedule. It will also allow workers to have access to more stable income.
69. The operating hours of businesses should support the ability to provide 15-hour minimum rosters to part-time employees.
70. This should be complemented by an increase to the minimum payment for a shift from 3 to 4 hours, to ensure that work is not then spread across 5 days (3 hour shifts). We will address the issue of minimum shifts when addressing discussion question 6.

### **Recommendation 1**

In the Awards relevant to SDA members, a **weekly minimum for Part time work should be 15 hours** at least and to ensure the hours are not spread over 5 days, the minimum shift provision should be increased to 4 hours.

#### **Additional hours**

71. As mentioned above, a feature of part-time employment in the industries our members work involves low base permanent contracted hours which are relatively fixed and the offer of additional ordinary hours which are variable in the number of hours offered and when they are rostered to be worked.
72. There are a variety of ways that payment is made for additional hours worked under the Awards relevant to our submissions:

<b>Award</b>	<b>Payment for additional shifts</b>
GRIA	Ordinary rate if agree to work
FFIA	Ordinary rate if agree to work
PIA	Casual loading
SSWA	Overtime Rates
VRSR	Overtime rates
HBIA	Ordinary if agree to work

73. While additional hours worked at ordinary rates accrue leave, there is no compensation for workers for the insecurity and unpredictability of the hours and the impact this has on secure incomes.

74. Labour insecurity is not just a risk of losing a job, it also concerns forms of insecurity within a job. Two forms of labour insecurity integral to the concept of insecure work are: hours insecurity (too few, too many, or constantly changing) and earnings insecurity. (intermittent or fluctuating hours leading to irregularity of income)<sup>30</sup>.
75. It is clearly evident from The Report that a large proportion of permanent part-time workers in retail and other industries SDA members work in, such as Pharmacy, Fast Food and Hair and Beauty are in insecure work because they lack both hours and income security. Recent research indicates that regulation is required to fill the protective gaps to promote secure work and that 'even parts of permanent part-time work are frequently cited as significant sites for protective gaps'<sup>31</sup>.
76. Despite the fact that many permanent part-time employees are in fact in insecure work they are not being compensated for this in the rates they receive for work in addition to their base/contracted roster which is insecure, not consistent and irregular.
77. The other issue for workers covered by the above Awards that pay ordinary rates rather than overtime is that this is in the context of a broad span of hours and while penalty rates apply in some ordinary hours, most workers would also miss out on overtime rates because the rostered additional hours won't fall outside the span.
78. We also note that the payment of ordinary rates or an additional casual loading for agreed additional hours are a common feature of the feminised Awards above and not as common for the Awards that apply to more male dominated industries. This is also the case if you consider Awards broadly.
79. There is merit in consideration of the impact that the gendered nature of work has had on the formulation of terms and conditions in Awards such as this one and the impact this has on gendered outcomes with respect to security and levels of income.
80. The Senate Select Committee on Work and Care makes a recommendation in its Final Report to

***restrict the use of low base hour contracts, which can be 'flexed up' without incurring any pay penalty for additional hours worked beyond***

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<sup>30</sup> Campbell, Iain and Charlesworth S, *Promoting Secure Work: Two Proposals for Strengthening the National Employment Standards*, (2023) 36 Australian Journal of Labour Law, page 234

<sup>31</sup> Ibid, page 236

***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.*

81. The SDA supports this recommendation and believes that this is also necessary for Awards to meet the Modern Awards Objective 134(1)(da) the need to provide additional remuneration for: (i) employees working overtime; or (ii) employees working unsocial, irregular or unpredictable hours; or (iii) employees working on weekends or public holidays; or (iv) employees working shifts.
82. In line with this, the Awards relevant to SDA member coverage which allow for the agreement to work additional hours above the base contract hours should be amended to include payment at overtime rates, or alternatively, payment as ordinary hours (with leave accrual) paid at ordinary rates plus an additional penalty of at least 25%.

## **Recommendation 2**

83. Vary the Awards relevant to SDA member coverage which allow for the agreement to work additional 'ordinary' hours above base contract hours to include either payment at overtime rates or alternatively, payment as ordinary hours (with leave accrual) paid at ordinary hourly rates plus an additional penalty of at least 25%.
84. As discussed earlier in the submission the typical model of permanent part-time employment of low base contracted hours with additional hours creates a system where employees have low control over hours and are forced to accept additional shifts which do not match their caring responsibilities. If they don't accept them, they cannot make ends meet and they are fearful that they will not be offered shifts.
85. The Report found that there are high levels of workplace discrimination (based on family and caring responsibilities), and that when this is coupled with insecure and unpredictable work, it is impacting workforce participation and career opportunities for carers.

86. 28% of members turn down work activities or opportunities because of caring responsibilities, this is higher for parents (47%) and even higher for parents of children with a disability or additional needs (64%) and sole parents (53%).<sup>32</sup>
87. Throughout the survey, participants regularly commented on the lack of recognition, care and support they receive in relation to their caring responsibilities from their employer and line managers.

*I have an autistic child and my manager doesn't understand how hard it is for myself to work outside of a schedule that I have set for the fortnight.*

Woman, carer of person with disability, permanent part-time

*My workplace are often very inconsiderate to the personal needs to each of their employees. Often suddenly cancelling leave which was applied for and approved in the correct manner. They are extremely non-understanding when it comes to family emergencies. I have non-english speaking grandmother with Alzheimer-dementia who still lives at home and is often unpredictable. When extra care is needed I have been told to come to work and find someone else to deal with it.*

Woman aged 25 years or less, carer for person with long term illness, permanent part-time

*Have advised my department manager that I was unavailable after 5.30pm as I have a child with special needs and require routine at home, but they still roster me on once a fortnight after that time and regularly ask me to do shifts after that time as well.*

Partnered mother of child with disability, permanent part-time

88. While affecting everyone, challenges with poor working time security and rostering practices is only exacerbated for workers who provide care. Where workers described their arrangements as suitable, they also highlighted feeling 'lucky', and frame their workplace arrangements as atypical and precarious.

*I am very lucky with current dept manager. He understands my circumstances and works around me. This is not say if he left I would be this lucky.*

Woman, elder carer, casual

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<sup>32</sup> Ibid, page 105

*I have great hours that suit my family, I am part-time and my hours always remain the same, I'm very lucky.*

Woman aged 25+, permanent part-time

89. Despite the existence of flexible working policies and policies to support employees with family and caring responsibilities, many workers are punished and made to feel bad for communicating their availability, refusing unsuitable shifts, or taking leave, all of which have repercussions on access to hours and opportunities.
90. Members described repercussions and fear of being penalised, including loss of hours, when workers refuse shifts or seek to change them.

*"In the month of February my daughter, at kinder, has caught croup, gastro and a virus which led to having a lot of time off, to the point where I had been flagged at work and was on a warning for dismissal."*

Partnered mother, permanent part-time

*"I have time limits as to when I can start and finish due to childcare opening hours, primary school drop off times, etc. These sometime threatens my role as a manager. You are made to feel you must be available 24/7 without the excuse of family (being a male would be so much easier)."*

Partnered mother of child with disability, permanent part-time

*"I submit hours of availability and they are ignored then work get upset when I tell them I can't do those hours that are outside my availability. They also get upset that I can't work certain hours as I have no care for the kids to go too and it's close to costing me my job. I also find I get told there are no more hours during my availability but then I see newer staff members being rostered on for the hours I've been told don't exist."*

Sole mother of child with disability, casual

*If I knock back shifts I'm told I'm unreliable and henceforth may not get future shifts.*

Woman, elder carer, casual

*Managers still make you feel bad for calling in sick or taking personal leave, and sometimes ask for medical certificates which are really hard to get when you're caring for someone.*

Woman, carer for person with disability, permanent part-time

*[There is] no respect for carers even if you're a really good employee. It's big business, [we are] easily replaced. They look at staff as an expense not an asset.*

Woman, carer for person with long term illness, casual

91. 'Flexible work policies' are failing to deliver the outcomes for workers that they were designed to do, that is, supporting a working carer. Workers shouldn't have to be 'lucky' to get the roster they need to support their caring responsibilities and should not be penalised for trying to have a work and care balance.
92. There needs to be regulatory frameworks in place that employers must comply with for there to be any change in relation to this.
93. As part of Recommendation 21 of the Senate Select Committee on Work and Care Final Report, the Committee recommended that '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'.
94. The SDA supports this recommendation, however, rather than being framed as a general protection there should be a positive obligation on employers within Awards to ensure workers have a "right to say no" to additional shifts.

### **Recommendation 3**

Awards be varied to include a positive obligation on employers to provide employees with a 'right to say no' to additional shifts, without repercussion.

#### **Increasing part-time permanent hours:**

95. The other issue in relation to part-time employment, given the wide use in retail and other industries, is the need to ensure workers on base hour contracts have an appropriate mechanism to convert regular additional hours to their base contract hours.
96. As discussed in our submission above, low base contract hours has a detrimental impact on workers, especially those providing care. It exposes them to unpredictable and insecure rostering which makes combining work and care very difficult. It also leaves them vulnerable to insufficient earnings, underemployment, and little choice over the hours they have to accept.

*I would appreciate a contract reflecting my hours I regularly work as I am now a single mum trying to secure my home loan on my own to stay in our family home.*

*I would also appreciate more hours and a higher hour contract as this what my bank has told me I need. I am hopeful and hard working.*

*Would like the opportunity to increase my contract hours. Instead of being flex up.*

*I would like more permanent hours ie hours that I'm regularly rostered on for but aren't permanent*

97. The GRIA currently contains a mechanism that allows a part-time employee to request an increase in their guaranteed hours if their guaranteed hours are less than the ordinary hours they have been working over the last 12 months.

#### **10.11 Review of guaranteed hours**

**(a)** If an employees' guaranteed hours are less than the ordinary hours that the employee has regularly worked in the previous 12 months, the employee may request in writing that the employer increase their guaranteed hours on an ongoing basis to reflect the ordinary hours regularly being worked.

**(b)** An employee may only make a request under clause 10.11(a) once every 12 months.

**(c)** The employer must respond in writing to the employee's request within 21 days.

**(d)** The employer may refuse the request only on reasonable grounds.

EXAMPLE: Reasonable grounds to refuse the request may include the reason that the employee has regularly worked more ordinary hours than their guaranteed hours is temporary—for example where this is the direct result of another employee being absent on annual leave, long service leave or worker's compensation.

**(e)** Before refusing a request under clause 10.11(c), the employer must discuss the request with the employee and genuinely try to reach agreement on an increase to the employee's guaranteed hours that will give the employee more predictable hours of work and reasonably accommodate the employee's circumstances.

**(f)** If the employer and employee agree on an increase to the employee's guaranteed hours, the employer's written response must record the agreed increase.



**(g)** If the employer and employee do not reach agreement, the employer's written response must include details of the reasons for the refusal, including the ground or grounds for refusal and how the ground or grounds apply.

NOTE: If the employer and employee agree in writing to increase the employee's guaranteed hours, this will vary the agreement under clause 10.5.

**(h)** The employer and employee may seek to resolve a dispute about a request under clause 10.11(a) in accordance with clause 36—Dispute resolution.

NOTE: This could include a dispute about whether the employer's refusal of a request was reasonable, whether the employer discussed the request with the employee as required under clause 10.11(e), or whether the employer responded in writing to the request as required under clauses 10.11(c), (f) or (g).

98. The other Awards covering SDA members do not have such a clause.
99. The current GRIA clause does not adequately support the promotion of secure work. It is a weak entitlement because it provides an employer the ability to easily refuse and while the employee can file a dispute in relation to a refusal or the process, arbitration is only by consent.
100. The provision should provide a stronger right to covert hours and include the following:
  - (a)** Right to elect to convert regular additional hours to permanent hours; and
  - (b)** a positive obligation for an employer to convert the hours unless they can demonstrate the hours were not regular and there would be an unjustifiable hardship for them to provide the hours on a permanent basis; and
  - (c)** a worker should be able to elect to convert after six months of working regular additional hours; and
  - (d)** that the process to resolve a dispute should include arbitration (at the election of either party) if needed.

101. The improved provision should be included in all of the Awards that cover SDA members as all part-time workers should have access to a mechanism to increase their base hours if they regularly work more.
102. One member responding to our survey highlighted the difficulties associated with conversion and the need for greater rights and regulation around how conversion occurs:

*When requesting to convert from casual to permanent, I had to speak with the union and email higher management, requesting regular shifts due to child care. Despite having previously worked regular shifts (agreed between myself and current store Manager at each time Manager changed) I was told they could not offer regular shifts. I had to quote union and Fair work advice and tell them that they had demonstrated it was possible and I had a right to regular shifts due to being sole carer of 3 children, including an adult child with disability. It was on then, that I obtained regular shifts in my Fast Food job. I had been employed by this employer for 7.5 years at the time.*

*My 2nd job is casual, working in the disability sector, as a disability support worker. I am limited by the number of hours I can do, due to care of children.*

103. Consideration should also be given to when a part-time (and casual) employee should be able to elect to convert to full-time. Awards should include a right to become full time when working an average of 35 hours or more per week on a fairly consistent basis. Full time employment provides greater security (i.e., less fluctuation in hours over a roster period) and in the 'economy' other benefits flow such as accessing finance from banks.
104. The below table provides the proportion of full-time employees in retail and fast-food companies. The rostering provisions and rights around casual conversion and converting additional part-time hours are largely consistent with the underpinning Awards, which are failing to provide full-time employment across retail and fast-food. Apart from Costco and Apple, the rates of full-time employment are shockingly low, particularly in businesses with such expansive span of hours.

Company	Total employees	% full-time	Notes
<b>RETAIL</b>			
Aldi Stores	9,263 permanent part-time employees	0%	Only employ sales workers on permanent part-time basis.

			Source: WGEA 2023
Apple	2,067	43%	Source: WGEA 2023
Bunnings	43,600	28%	Source: WGEA 2022
Coles Group	93,285	6.5%	Source: WGEA 2021
Costco	1,580	53%	Source: WGEA 2021 747 PT permanents
Country Road Group	3,307	9%	Source: WGEA 2020 2,436 casuals
David Jones	5,276	17%	Source: WGEA 2020 2,726 PT permanents
EG Fuelco	3,275	1%	Source: WGEA 2022 2,163 PT permanents
IKEA	3,091	19%	Source: WGEA 2023
Just Group	6,729	15%	Source: WGEA 2023
Myer Stores	8,960	9%	Source: WGEA 2023
Officeworks	6,305	16.5%	Source: WGEA 2022
Priceline	1,193	5%	Source: WGEA 2022
Target	9,511	2.5%	Source: WGEA 2022
Kmart	37,723	2%	Source: WGEA 2022 32,250 casuals
The Reject Shop	3,408	0.5%	Source: WGEA 2021 3,408 casuals
Woolworths Group	148,421 (Food retailing)	11%	Source: WGEA 2021 58,448 casuals Includes Endeavour Group Ltd
<b>FAST-FOOD</b>			
Collins Foods	12,732	4%	Source: WGEA 2023
Hungry Jacks	20,967	1%	Source: WGEA 2023

McDonalds Australia (Company owned stores)	964	42%	Source: WGEA 2021
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105. Awards need to provide more effective pathways for workers to be full-time or part-time with sufficient and stable hours.
106. The SDA understands employers need some flexibility to roster around customer patterns and operations, however, this should be able to be done with permanent, stable and predictable hours (on a full-time and part-time basis) with a small proportion of casual staff.

#### **Recommendation 4**

Include a strengthened **right to elect to convert regular additional hours** worked by a part-time employee to their guaranteed hours (base contract hours) in all Awards. The provision should be strengthened by including:

- (a) a right to elect to convert regular additional hours to permanent hours; and
- (b) a positive obligation for an employer to convert the hours unless they can demonstrate the hours were not regular and there would be an unjustifiable hardship for them to provide the hours on a permanent basis; and
- (c) a worker should be able to elect to convert after six months of working regular additional hours; and
- (d) that the process to resolve a dispute include arbitration at the request of either party rather than by consent.

#### **Recommendation 5**

Include a **Right to become full time** when working an average of 35 hours or more per week on a reasonably regular basis.

#### **Question 1 Part-time – roster changes and Question 8 Notice of rosters**

107. Given the link between roster changes for part-time employees and notice of rosters more broadly and that the impacts of both on workers are similar we will address this part of Question 1 with Question 8 of the Discussion Paper.

108. Unstable and unpredictable work time arrangements impact families who need to manage care of children and others because it requires constant changes to family and caring arrangements so that the working carer can maintain employment.
109. When surveyed regarding this, 'SDA members described very poor working time security. Very high proportions of participants work non-standard hours, face challenges relating to unpredictable rosters (and income), and experience lack of consultation over changing work times. While affecting everyone, these factors exacerbate difficulties workers face in providing care'<sup>33</sup>.
110. The report found that many workers, including those employed on a permanent basis don't have regular work times (Chapter 8 Working time and rostering practices):
- One in ten parents (10%) said they do not have a regular workday. (Figure 3.3)
  - Only two in five (40%) work the same shifts each week 'all of the time', (fathers 48% and mothers 37%). 17% only work the same shifts 'some or a little of the time' and 6% 'none of the time'.
  - Permanent employment is not always stable or predictable with 18% of part-time and 13% of full-time workers only working the same shifts 'sometimes', 'a little of the time' or 'never'.
  - 41% of parents said their shifts can change unexpectedly, including 36% of part-time and full-time employees. (Table 8.2)
  - Unpredictable hours of work impacts workers ability to meet their financial needs. 34% agreed or strongly agreed that 'if my hours were more predictable, I would be able to work more' (53% of casual workers and 29% of permanent workers). (Figure 8.6)
  - SDA members have very limited control over their working times. Only 19% can adjust start/ finish times and only 21% said they can change workdays.
  - 1 in 3 workers have to closely monitor their phone or device to receive notice of shifts.
111. Below provides some of the comments members made in relation to how they are

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<sup>33</sup> Ibid, page 60

rostered and how their work times are set:

*“No notice when needed for an extra shift. This morning I had 45 mins notice and sometimes extra shifts are added without being asked.”*

Woman, carer, permanent part-time

*“It’s all over the place. Shifts get changed last minute, I never get the same shifts*

*every fortnight. You ask for extra contract hours and they give you the bare minimum but expect you to give up your weekends without notice.”*

Partnered mother, permanent part-time

Would like more consistency with hours and days that are worked. Rostering is very irregular and am called in for many shifts.

Female worker permanent part-time

*Rostering is poorly organised. Start/Finish time varies regularly on short notice.*

Male, permanent part-time

112. Working hours in retail are highly variable, change frequently, unexpectedly and often at short notice, all of which making it difficult to plan stable care arrangements. ‘Irregular work times increase the work of coordinating care, especially for mothers who tend to carry the responsibility for managing, reassessing and changing care arrangements, day to day and week to week’<sup>34</sup>.

113. The impacts of these working time and rostering practices on workers, and in particular carers is evidenced by the following:

Among those with a child aged 12 or under:

- 68% agreed or strongly agreed with the statement ‘When I get my roster, I have to check it fits with the family’s childcare arrangements’.
- 69% agreed their work times affects when other family members can work.
- 62% said they find it stressful to organise childcare around work times.
- Close to half of respondents described making arrangements within the family to accommodate work schedules and childcare inflexibility as what works well for

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<sup>34</sup> Ibid, page 60

them.

- 26% said they relied on informal care from family and friends
- 22% said they coordinated work schedules to ensure a family member, usually a parent, was home with young children
- 12% described using 'opposhifts' – parents coordinating work hours. These types of arrangements have impacts on families, reducing time spent together and creating stress to juggle the care of children while maintaining work arrangements.

114. Below is the experience of members working opposhifts and the impact it has on them and their families:

*"I rarely see my husband, he works early morning until 5.00pm and I walk out the door to work until late. We struggle greatly."*

Partnered mother of child with disability, permanent part-time

*My partner works full-time Monday to Friday 5.00am to 1.30pm. I work part-time Wednesday to Sunday in the afternoons. I do school drop off and my partner does pickups. My mother-in-law does school holidays and anything we can't make due to appointments. This limits my availability for work and can cause issue during the holidays.*

Partnered mother of child with disability, elder carer, permanent part-time

115. Stress and mental health impacts are also being experienced by carers of adults, including older people and people with a disability or temporary or long-term illness. Like parents, carers of adults are ill-supported by the workplace and the current industrial relations framework to provide the care they need to adult members of their immediate and extended family, household and community. Having stable, predictable rosters would allow them to plan and provide care, like taking their parent to a medical appointment, or providing routine care such as shopping, and household chores.

*I have repeatedly advised my manager that I am a carer and being given no notice on roster changes is very stressful.<sup>35</sup>*

Woman, carer of person with long term illness, permanent part-time

*If [my hours] were consistent week to week I could plan doctor's appointments for my elderly mother. As they change often it's very hard to plan for outside your work life.<sup>36</sup>*

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<sup>35</sup> Ibid page 70

<sup>36</sup> Ibid, page 72

Woman, elder carer, permanent part-time

116. Workers need protections and improved rights in Awards that will provide secure, predictable and stable rosters with genuine consultation regarding rosters and other changes to work arrangements and accommodation of caring responsibilities, without repercussion.

117. The member story below highlights the issues identified:

*I made sure my hours would fit with my family by being completely transparent and up-front about my needs. It was perfect up until recent new management. I'm constantly having to dispute my roster, and my hours are getting cut because they can no longer work with my schedule. I feel like a burden, and I come home stressed out and exhausted.*

*My hours were changed from early mornings to now between 8 and 6 pm. I needed those early shifts to be home to care for my mum who has Alzheimer's.*

*Unfortunately, the umbrella term 'operational changes' now means that Woolworths can change people's hours to avoid penalties and there is nothing the SDA can do. I lost \$100 dollars a week!! I am now looking for work in a different sector and have decided not to return to my job after my long service leave ends.*

*Would be good once you sign a contract it is agreeable to everyone not just the company.*

*I have put a letter in for part time work. I have been at ... over 2 and a half years. Gave letter to manager. I reminded her twice week 5 still have no answer. Just want regular hours and security. Have disabled child. Would like to know when to work not as soon as you can get here. Would like some say in rostering. Disappointing when casuals are getting more hours doing same work. 😞*

*Inconsistent and is changed regularly without notice.*

*Would be a lot easier to manage if they were more regular and consistent*

*Rosters are usually first posted as a "cut and paste format" (management words) from a previous roster. Ongoing changes are then made by management (usually without consultation) to provide skeleton shift coverage. Unfortunately changes made without proper consultation then interfere with issues such as medical*



*appointments made on the basis of what has been regular shifts rostered in the past and shown on the posted roster. There is a distinct reliance by management that employees will simply be available at short notice without consultation.*

118. The combination of work and care also has a significant negative impact on the lives of children of SDA members, including increased household stress, and missed opportunities for early education and important social and community activities. Retail workers are the parents to over a quarter of a million children under the age of 15.
119. The Report found that *'Working time arrangements, combined with low pay and rostering arrangements which are out of step with the routines of children and families, mean that many children of SDA members are missing out on the benefits of extra-curricular activities, and on quality early education to prepare them for school, with long-term implications for their futures<sup>37</sup>. Children's life chances should not suffer because of their parents' employment, and employers must ensure the arrangements they offer do not contribute to intergenerational disadvantage<sup>37</sup>.*
120. Nationally, 95% of children participate in a preschool program for 15 hours per week before they start school. Among surveyed parents with a child starting school in 2022, only 72% said their child attended at least 15 hours of long day care, preschool, or kindergarten, where they might receive a preschool education. 10% said they attended but for less than 15 hours, 12% did not attend, and 5% were unsure about attendance or hours<sup>38</sup>.
121. This can have a long-term impact on children. *'Research shows starting school without the skills that early education can provide, can leave children trailing further and further behind their peers throughout primary and high school<sup>18'39</sup>.*
122. Not only do work hours impact on access to early education, but also on children's participation in important activities outside of school such as sport, music, medical and well-being appointments, all of which contribute to important life experiences that build skills and confidence in children. 54% of parents surveyed agree or strongly agree that work hours make it difficult for children to attend extra activities, such as swimming, sport and music.

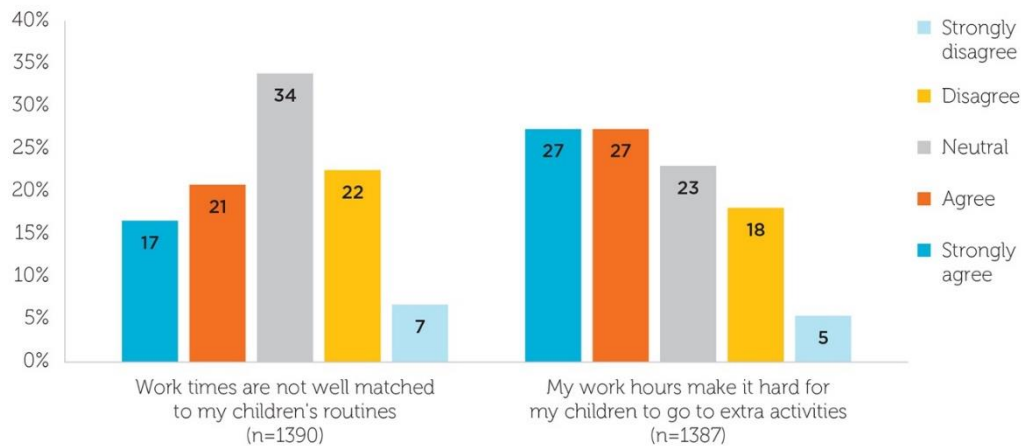
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<sup>37</sup> Ibid, page 93

<sup>38</sup> Ibid, page 34

<sup>39</sup> Ibid page 34

**Figure 9.2 Agreement with statements about children's activities and routines, parents with a child aged 12 or under (%)**



*As a single mother I am committed to working hard for my children. With consistent hours, I have been able to have stability. Now due to low hours of only 9 hours a week, all of a sudden I have found myself more stressed and losing sleep at night worrying about how I am going to survive. I've considered ...quitting their sports because me having to take them to training and their games doesn't suit my managers idea of rostering. [But] I know it can be done, as it was managed well once before with many hours without me having to stress.*

Sole mother, casual

123. Children's access to education and opportunity should not be determined by their parents' employment. The children of SDA members have unequal access to early childhood education and important extra-curricular activities which impacts intergenerational disadvantage. Workplace relations settings such as those set out under Awards must ensure work and rostering practices are not exacerbating this and must instead support working carers.

*I have to leave my younger kids with my oldest to look after but I stress about what they are doing. I'm not there to do homework with them and my youngest is autistic and hasn't been going to school because I'm not there to get him there.*

124. As stated by the Senate Select Committee on Work and Care 'While Australians might be said to have a right—indeed, an obligation—to work, they lack a right to work and care, and lack a work-care system that genuinely and practically supports their work

*and their households In the Worker carers and .... the lack of 'roster justice'—meaning the use of unpredictable, short hours rosters—has real and adverse consequences for working carers, especially if their engagement with paid employment is already tenuous.*<sup>40</sup>.

125. When discussing what working carers need the Committee referred to the disruptive impact of a lack of 'roster justice' particularly variable hours and unexpected schedule changes, calling for improved rostering rights for employees, including predictable, fixed shift scheduling - especially for working carers. The Final Report indicated that *'aside from the need to secure sufficient paid work hours, **working carers require a consistent and predictable employment schedule, and genuine consultation on when and how they work**, along with the ability to turn down extra hours without negative consequences (such as loss of future hours or shifts)'*.
126. In a recent study of weekend work and Work-Family Conflict, it was found that schedule control is an important tool in protecting workers from negative family outcomes when they are making decisions about when they work, including non-standard hours like weekends.
127. Research suggests that 'schedule control has repeatedly been shown to be positively associated with measures of work nonwork balance (Nijp et al., 2012)<sup>41</sup> In a study of the Work Family Conflict (WFC) when working weekends, the results suggested that schedule control is the most powerful predictor of WFC, with the exception of number of weekly working hours.<sup>42</sup>
128. The research also found that when considering the work family conflict for weekend work:

*Schedule control is therefore an important work–domain resource that can buffer the detrimental effects of weekend work on family life. If schedule control is high, weekend work can be interpreted as a choice that fits with workers' family responsibilities. However, our analysis also showed that only around one third of weekend workers have a sufficiently high level of*

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<sup>40</sup> Senate Select Committee on Work and Care Final Report, page 112

<sup>41</sup> Laß, I and Wooden, W, *Weekend work and work–family conflict: Evidence from Australian panel data*, J. Marriage Fam. 2022;84:250–272.

<sup>42</sup> Ibid, page 266

*schedule control. The remaining two thirds who have less or no say in the timing of their work are subjected to increased levels of WFC.*

129. The study ‘provides support for the introduction and extension of provisions in industrial statutes that provide workers with greater control over their working time’<sup>43</sup>.
130. In the recent study What Works for Working Mothers? A Regular Schedule, it was found that there is the ‘existence of a “child penalty” in working arrangements, and that when these working arrangements are allowed to change, labor supply changes as well’ and that ‘when allowed to request not better defined “changes in working arrangements”, mothers of young children choose to increase the predictability of their schedules, rather than their flexibility. Second, an increase in predictability is associated with a smaller child penalty on the intensive margin labor supply: when their schedules are more predictable, mothers of young children work longer hours’<sup>44</sup>.
131. This is also important as it demonstrates the positive gender equality impact that changing Awards to provide greater employee schedule control and predictable rosters will have.
132. The Awards that cover the employment of SDA members have varying provisions with regard to roster changes for part-time employees:

<b>Award</b>	<b>Roster change provisions</b>
GRIA	Employer can change roster with 7 days’ notice or 48 hours in case of emergency
FFIA	Agreed variations only, in writing
PIA	Employer can change with 7 days’ notice or 48 hours in case of emergency
SSWA	Roster change by mutual agreement only
VRSR	Roster change by mutual agreement only
HBIA	Employer can change with 7 days’ notice or 48 hours in case of emergency

133. As shown above the Awards are split between roster change by mutual agreement only and employer’s right to change a roster by giving 7 days’ notice or 48 hours in the case of emergency.
134. One of the main reasons SDA members ask the SDA for advice or representation is in

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<sup>43</sup> Laß, I and Wooden, W, *Weekend work and work–family conflict: Evidence from Australian panel data*, J. Marriage Fam. 2022;84:250–272, page 269

<sup>44</sup> Ciasullo, Ludovica and Uccioli, Martina, *What Works for Working Mothers? A Regular Schedule Lowers the Child Penalty* (April 17, 2023). Available at SSRN: <https://ssrn.com/abstract=4572399> or <http://dx.doi.org/10.2139/ssrn.4572399>

relation to employer imposed roster changes, which as the Report demonstrates causes great difficulty, stress and hardship on working carers.

135. However, this problem only arises in retail, pharmacies and hair and beauty because members in those industries do not have protections against employer imposed roster changes in their Awards. There are much greater protections in the Storage Services and Wholesale Award as the only mechanism to change a part-time employee's roster is by mutual agreement.
136. The other issue that the table above highlights is that, again, there appears to be differences in the contents of Awards based on the gender segregation of the industries and occupations they cover.
137. Storage Services and Warehouse Award workplaces are predominately male, as is the Vehicle Industry. While the Fast Food Award is slightly better than the Storage Services and Vehicle Awards its roster change provisions are not as strong.
138. When considering the Awards analysed as part of the Discussion Paper, there is also evidence of the difference in rostering provisions and the level of schedule control workers have between Awards that cover feminised industries compared to male dominated industries.

<b>Award</b>	<b>Part-time Roster change provisions</b>
Building On-site Award	Varied in writing by consent
Manufacturing Award	Varied in writing by consent
Electrical Contracting Award	No variation (would need consent)
Plumbing Award	Varied in writing by consent
Road Transport Award	Varied in writing by consent (day worker)
Childrens Award	Employer can change with 7 days' notice or less in case of emergency
Clerks Award	Employer can change with 7 days' notice
Educational Services General Staff Award	By agreement for part-time, 7 days' notice by employer for shift workers
Health Professionals Award	Employer can change with 7 days' notice or less where absence of another staff member
SCHADS Award	Change with 7 days' notice or less to cover and absence or in case of emergency

139. For too long, we have looked at this industrial problem through the prism of 'flexibility'. What this has led to is a complete imbalance of power so that workers in industries like retail, pharmacy, hair and beauty, hospitality, and care settings, only have access to bad flexibility, where the employer has the control, rather than good flexibility which

allows workers control over their work and life balance. What workers need is good flexibility that is underpinned by access to predictable rosters they have control over so they can work and care.

140. The only way to ensure that working carers are appropriately protected and given a genuine right to care is by varying Awards so that changes to agreed rosters (patterns of work) can only be done by mutual agreement between the employer and employee.
141. This would allow for more genuine consultation about the need to change a roster and protect workers who have genuine reasons they cannot accommodate the change.
142. Where an Award can't be varied to include roster change by mutual agreement only, it should be varied so that where the employer proposes a roster change they must give 28 days' notice, and the worker cannot work the proposed roster, the worker has a right to raise a dispute to the FWC for conciliation and arbitration (by either party not by consent) and the status quo (original roster) continues to be worked until the dispute is resolved.
143. The ability for a worker to be able to continue to work their original roster while the dispute is being settled is vital so that they can continue to undertake their caring responsibilities without undue disruption.
144. There are many reasons why a working carer cannot change the times they have to provide care. This may include the inability to change formal childcare days or informal childcare when a partner or relative is caring for their child.
145. We currently have some Enterprise Agreements covering retail workers that contain provisions for arbitration and for status quo in relation to the roster change until the dispute is resolved. We rarely have disputes that need to be filed in the FWC or arbitrated. This is largely due to the fact that the status quo protection and ability to seek arbitration acts as an incentive for genuine consultation and resolution. Awards should be varied to include these important mechanisms for roster changes.
146. The dispute provisions in Awards have the ultimate power in the employer's hand as there is no arbitration right for an employee unless the employer agrees. The current process provides no real security or recourse to a worker. In order to implement this an arbitration right on roster change disputes must be included. Having an arbitration right does not mean it will be used/accessed unnecessarily, but if parties know that the FWC can arbitrate, better process and genuine consultations might be engaged to

avoid or lessen the 'risk' of needing arbitration.

### **Recommendation 6**

Awards should contain roster change mechanisms by consent or mutual agreement only.

Where an Award can't be varied to include roster change by mutual agreement only, it should be varied so that where the employer proposes a roster change they must give 28 days' notice, and if the worker cannot work the proposed roster, the worker has a right to raise a dispute to the FWC for conciliation and arbitration (by either party not by consent) and the status quo (original roster) continues to be worked until the dispute is resolved.

### **Rosters for full-time employees**

147. Certainty and security of rosters for full-time employees is also vital. Under the GRIA roster changes can be posted with 7 days' notice unless the employee disagrees which then extends to 14 days' notice. This is also after the consultation on the roster change has occurred in line with Clause 35.
148. Making changes to your work and care schedule which typically involves changes to formal and/or informal care of children or others including elderly parents or family members who are ill or have a disability with 7 or 14 days' notice is extremely difficult and stressful for most workers. For many, it isn't possible because in many cases they have already scheduled their work around the care they are locked in to providing.
149. The evidence above highlights this and shows that full-time workers are not exempt from having rosters that are regularly changed and don't provide stability.

*DM regularly changes my full time roster and doesn't ask or tell me. We are expected to look online every day.*

150. While full-time workers get the additional 14 days if they disagree with the change and they can have the dispute about the roster change dealt with under the Disputes Resolution clause under the Award, as with part-time employees' arbitration is only by consent.
151. In some Awards the establishment of a roster for a full-time employee is less clear and there is no explicit obligation written into some Awards about establishing a regular pattern of work at the time of commencement. Awards our members are covered by should be clear that a regular roster should be agreed between the employer and full-

time employee at the time of commencement.

152. The provisions for roster changes for full-time employees should be the same as those recommended above for part-time employees.
153. In relation to a right to care and the right to predictable, stable rosters, both full-time and part-time employees should have access to the same protections and rights. We make the same recommendations in relation to roster changes for full-time employees as we made for part-time employees. This should be the case for all Awards (unless alternative shift arrangements exist).

### **Recommendation 7**

Awards should require that a regular roster be agreed between the employer and full-time employee at the time of commencement.

### **Recommendation 8**

Awards should contain roster change mechanisms for full-time employees by consent or mutual agreement only.

Where an Award can't be varied to include roster change by mutual agreement only, it should be varied so that where the employer proposes a roster change they must give 28 days' notice (rather than 7 or 14), and if the worker cannot work the proposed roster, the worker has a right to raise a dispute to the FWC for conciliation and arbitration (by either party not by consent) and the status quo (original roster) continues to be worked until the dispute is resolved.

### **Recommendation 9**

Awards should remove the ability to change a full-time roster with 48-hours' notice or alternatively include the right to say no.

### **Notification of rosters**

154. The evidence from the Report which we have highlighted above (paras 101-108), demonstrates the lack of regularity and high degree of frequent roster change that SDA members experience in relation to their roster and the result this has on their ability to combine their paid work arrangements and their caring arrangements.
155. While the data shows it is worse for casuals it is also prevalent for permanent



employees. Given the high use of casual employees and part-time employees on low base hours with variable additional hours in industries such as retail, fast food, pharmacy and hair and beauty, and the fact that most employees are women, who have a disproportionately higher responsibility for care, protections in relation to notice for rosters is vital.

156. As shown in the data we provided above, SDA members shoulder a disproportionate caring responsibility than the national workforce, however, most of the Awards that cover them provide little rights and protections that enable them to work while providing care.
157. All Awards should contain notice periods for the notification of rosters and roster changes that appropriately allow workers to vary their time they need to meet their responsibilities outside of work with the least possible disruption. To do this Awards should contain notice periods for all workers (including casuals) for a roster change and an appropriate notice period for the notification of a roster for all workers including casuals.

### **Recommendation 10**

Vary Awards to include notice periods for a roster change and an appropriate notice period for the notification of a roster for all workers including casuals.

158. Another emerging issue that needs some consideration regarding whether Awards continue to meet the Modern Awards Objectives is the proliferation in the use of computerised rostering systems.
159. The systems typically use a range of data including customer traffic, stock flows and task time analysis to determine the number of hours of labour needed at any time in the week. This then determines how many hours are needed to be rostered across the store or departments of a store. Rosters are often then electronically generated using the information and communicated to workers via an app. The app is used for multiple purposes including to communicate rosters, get employee acceptance, for signing in and out of shifts and for communication and training purposes.
160. The Report found that there was a general preference for more personal communication around rostering and roster changes and while there is an acceptance of the use of apps as a tool it shouldn't substitute personal communication.
161. The use of apps or other electronic means for communicating rosters and roster

changes doesn't provide for proper consultation with the employee, despite requirements to do so under legislation, Awards, and many of the Enterprise Agreements that our members work under. Lack of consultation has a significant impact on employee schedule control and a worker's ability to obtain a roster that enables them to meet caring responsibilities.

162. It has also led to workers being forced to constantly check the app, especially for casuals and those part timers on low base contracts who need additional shifts to survive. The use of computerization and apps also impinges on an employee's time outside of work putting more pressure on them while caring.

*Nobody tells you it just appears on the computer sometimes you can't plan family events.*

Male aged 25+, carer for person with disability, permanent part-time

*I have to constantly check the roster because our roster app does not give notifications if a change is made.*

Partnered mother of child with disability, casual

*I would like more hours but unable to get them and dislike having to check online to see if I've been given an extra shift without asking me first.*

Partnered mother, elder carer, permanent part-time.

*With the current arrangement in the app we can see our new roster 4 days prior to starting the next week. And if changes are made there is no sort of external notification from the app to inform us of those changes.*

Sole mother, permanent part-time

163. Better protections and rights for workers in relation to the use of technology must be developed including compensation for time expected to use workplace technology outside of the workplace and for the use of the workers own device and data. Technology should also ensure compliance with the relevant industrial instrument governing rostering, such as Awards, and not result in discriminatory outcomes.

### **Recommendation 11**

The FWC should consider the proliferation of computerised rostering systems and technology more broadly, and its impact on workers and whether protections are needed in Awards to ensure they continue to meet the Modern Awards Objectives.

### **Right to Care Roster**

164. The terms and conditions contained in Awards are instrumental to regulating the employment relationship and the control and power that employers and employees have, including in relation to the way that work is arranged.
165. We can see from the evidence presented in The Report, which has been detailed

throughout the submissions and also from the evidence contained in the Senate Select Committee on Work and Care Interim and Final Reports that Awards are failing to provide fair and appropriate regulation of the control over working arrangements and that this is currently imbalanced in favour of employers, resulting in an almost unworkable situation for worker carers.

166. This is not only impacting on worker carers access to secure, sufficient work and their ability to fully participate in work to enable them to have decent incomes and economic security, it is having severe impact on families and the ability for them to manage the care of everyone in their immediate and extended family and community, but it is also impacting on society and the economy more broadly.
167. Closing the workforce participation gap between women and men would increase Gross Domestic Product (GDP) by 8.7 per cent or \$353 billion by 2050.<sup>45</sup>
168. We know from the data from the Report that large proportions of workers want to work more but can't because of the unpredictability of rosters and the regularity of roster changes. Having more employee schedule control built into Awards would have a positive impact on gender equality and the participation of women in work..
169. In addition to changing Awards to provide more schedule control for workers, Awards should also contain a Right to Care clause that provides a positive obligation on employers to provide employees with a roster that accommodates their caring responsibilities.
170. This positive obligation should also be subject to the dispute resolution clause in the Award to ensure employees are able to access a remedy in the case an employer does not provide a roster that accommodates their responsibilities.
171. We know that there are protections against the discrimination of workers with caring responsibilities in various anti-discrimination legislation, and that provides an important protection, however, it is not having the direct impact on the workplace and workers in the way that a change to Awards to include a positive obligation on employers would have. We see the evidence of this in relation to the levels of discrimination in the Challenges of work, family and care for Australia's retail, online retail warehousing and fast food workers (The Report).

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<sup>45</sup> Equity Economics (2021) *Back of the pack – How Australia's parenting policies are failing women and our economy*, December 2021, p 9

172. This is supported by Recommendation 1 of the Senate Select Committee on Work and Care which states that ‘The Australian Government should implement the recommendations in the committee’s interim and final reports to a range of systems, including workplace relations, early childhood education and care, paid leave, disability and aged care, as well as financial supports for carers. **This reform package should ensure that Australians have a right to care, alongside their right to work, and our systems and laws should provide unequivocal support for this important role through a new work and care social contract fit for the 21st century**’.

### **Recommendation 12**

Awards should contain a Right to Care clause that provides a positive obligation on the employer to provide employees with a roster that accommodates their caring responsibilities.

**Question 2. Individual flexibility agreement: Are there any specific variations to the individual flexibility agreement provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?**

173. The SDA has continued to argue against unfair individual flexibility agreements (IFA), which are not better for the individual, reduce their conditions and apart from potentially giving them conditional access to more hours have no benefit to the employee, least of all providing ‘job security’.
174. The SDA has attached at Attachment 1 one such example.
175. Despite the IFA stating: ‘Under these agreed variations, the Employee will enjoy flexible and guaranteed work hours suited to their individual needs, ensuring they are better off overall under this Agreement.’ There is no ‘individualisation of conditions and no benefit to the employee are discernible in the IFA.
176. This IFA has provisions that:
- Allows work to start at 7am on a Sunday (rather than 9am) to ‘avoid traffic’
  - Removes Penalties on weekends (and no offset)
  - Prohibits discussing the IFA with other workers
  - Requires medical certificates for paid sick leave
177. IFAs continue to be dressed up to give the appearance of a benefit to employees but

the reality is very different. We now have improved access to flexible working arrangements which correctly allow employees to change working arrangements without having to forgo the minimum terms and conditions they are entitled to under the Award. This is the mechanism, along with secure rostering that employees should be able to rely on to get the flexibility they need to get predictable stable and secure employment to enable them to manage care arrangements.

178. The SDA supports the recommendation of the ACTU in relation to IFAs, that they be removed from Awards. In the event they are retained, we support the recommendations of the ACTU that the standard term be varied.

### **Recommendation 13**

Remove IFA provisions from Awards.

### **Recommendation 14**

If the IFA provision is not removed from Awards, vary the standard term by:

- Relocating the final subclause of the standard term as the first, and supplementing it to alert readers to the NES right to request a flexible working arrangement;
- Ensuring that an employer's "proposal" for an IFA includes a draft of the IFA;
- Ensuring that an employer's "proposal" for an IFA includes a statement to the effect that the employee is free to choose to agree or not agree to the proposal; discuss, seek advice or be represented in relation to the proposal; and put forward an alternative.
- Ensuring that an employer's "proposal" for an IFA, and any IFA made, states the employer's assessment as to whether the IFA will result in any improvement to the regularity and predictability of the employee's work and income;
- Referring to the capacity to bring disputes under the dispute resolution procedure and to the Commission's power to conciliate, mediate, express an opinion or make a recommendation; and
- Providing a capacity for the Commission to review an IFA and express an opinion about whether it continues to meet the BOOT and whether any expectations concerning improvements to regularity and predictability of hours and income had been realised.

179. The SDA welcomes the recent changes to the Section 65 of the Fair Work Act to

strengthen the rights for employees to change their working arrangements. While this should lead to improvements in access to a change in working arrangements, there are additional ways that this right could be strengthened under Awards.

180. Access to rights under Section 65 of the Act are currently restricted to certain circumstances. To remove the stigma of care, consideration should be given to extending this right to all workers regardless of the circumstances for the need. If the criterion for access is not expanded to all workers, Awards should be amended to ensure that carers who provide regular care to a child school age or younger are eligible to change their working arrangements, not just parent of the child (e.g. to ensure grandparents/siblings/aunts/uncles and others captured).
181. The other issue in relation to eligibility is the need to meet certain criteria in relation to status and length of services. The need to change working arrangements is no less significant for workers with 12 months service or those with one month service. The eligibility based on length of service should be removed in Awards.
182. The change to the Act to provide a mechanism for workers to have a refusal based on business grounds dealt with by the FWC is a very important change. This could be further strengthened by amending the test for refusal to an employer only being able to refuse on the grounds that the change would result in unjustifiable hardship rather than on reasonable business grounds. This would be in line with anti-discrimination and general protections frameworks and would better support the ability for more workers to have access to a change to working arrangements.

### **Recommendation 15**

Extend right to change working arrangements to all workers regardless of the circumstances.

If the criterion for access is not expanded to all workers, Awards should be amended to ensure that carers who provide regular care to a child school age or younger are eligible to change their working arrangements, not just the parent of the child (e.g. to ensure grandparents/siblings/aunts/uncles and others captured).

### **Recommendation 16**

Amend Awards so that the only way an employer can refuse a change to working arrangements is by demonstrating it will result in 'unjustifiable hardship' rather than as a result of 'reasonable business grounds'.

**Question 3. Facilitative provisions - discussion question: Are there any specific variations to the facilitative provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?**

183. The SDA supports the submissions of the ACTU in relation Facilitative Provisions in Awards and in particular the recommendations that relate to strengthening protections in the provisions to ensure they do not result in employees being worse off.

**Question 4. Working from home**

184. Working from home is not a feature in the industries that SDA members work so we will not be making submissions in response to this Discussion Question.

**Question 5. A right to disconnect**

185. The SDA notes that this is now being dealt with by the FWC in separate proceedings and will no longer form part of the Review. The SDA will make submissions and participate in Consultations as part of the separate process.

**Question 6. Minimum payment periods: Are there any specific variations to the minimum payment periods for part-time employees in modern awards that are necessary to ensure they continue to meet the modern awards objective?**

186. The SDA Who Cares? Report found that rosters for permanent part-time and casual employees typically include short shifts, despite many workers preference for longer shifts. Short shifts are not well suited to formal care arrangements such as childcare, and the report found that access to the Child Care Subsidy and formal childcare broadly was limited for families with short hour shifts. The rostering of short shifts also results in workers being rostered over several days to meet their base hour contracts. Many members feel that their hours are spread over too many days, also impacting on their ability to provide care.

187. The Report found that:

- 40% agreed (or strongly agreed) that “I would like to work more hours” and 34% disagreed (or strongly disagreed)
- 37% agreed or strongly agreed that “I would prefer if the shifts available were longer”, compared with 34% who disagreed
- While more disagreed or strongly disagreed (45%), a substantial minority (27%) felt

their work hours were spread across too many days.<sup>46</sup>

188. Respondents to the survey expressed difficulties with short shifts:

*3 hour minimum shifts are frustrating. Apparently these are the new requirement and working 15 hours a week doesn't support my family.*

Woman aged 25+, permanent part-time

*Rostering sucks. It is bad now. A big company that made so much money last year cut our hours down. Instead of doing a 5 hour shift like we usually do it's cut down to 3 hours.*

Man aged 25 years or less, permanent part-time

189. There is a cost in relation to time and money for employees to attend a shift. The income that can be earned from a shift must compensate for time worked and the time and cost of attending work, for example for transport time and cost, work clothing expenses, and childcare etc. The best way to ensure this under the current Award system is to ensure minimum shift payment provisions adequately compensate for this.
190. In most of the Awards that cover SDA members, there are no minimum shift provisions for full-time employees. While rostering provisions protect against the potential for very short shifts, this should be explicit in Awards.
191. Shift length in retail and fast food in particular is also compromised because employers choose to roster below the shift length threshold for entitlements to paid breaks.
192. Under the Retail Award and Fast Food Award, employees who work 4 hours or more are entitled to a paid 10-minute break. To avoid this, employers typically roster employees to work less than 4 hours, some even up to 3 hours and 45 minutes.
193. To address this, these Awards should be amended so that all employees are entitled to a paid break on each shift, regardless of shift length. This may lead to employees being rostered for more than the minimum 3 hour shift as the incentive to roster to avoid a paid break will be removed.

### **Recommendation 17**

Increase the minimum shift payment under the Awards SDA members are covered by to 4 hours for all employees.

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<sup>46</sup> Ibid, page 64



### **Recommendation 18**

Include a minimum shift for full-time employees (of at least 4 hours) in Awards where minimum shifts for full-time employees are not currently included.

### **Recommendation 19**

Amend breaks provisions in the Retail, Fast Food, Pharmacy and Hair and Beauty Awards to include a paid break to all employees for every shift worked regardless of shift length.

### **Question 7. Span of hours: Are there any specific variations to span of hours provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?**

194. Span of hours clauses in Awards are important because they provide the boundaries for a range of entitlements, such as rostering and overtime. The span of hours in the Awards that SDA members are covered by vary:
- (a) Storage Service – span is 7am to 5.30pm Monday to Friday unless employee/s and employer agree to ordinary hours on Saturday and Sunday
  - (b) Retail Award – broad, across 7 days from 7am up until 11pm depending on trading hours
  - (c) Pharmacy Award – Broad, 7am to Midnight, 7 days a week
  - (d) Hair and Beauty Award – 7 days a week with varying hours but expansive
195. There is no spread of hours clause in the Fast Food Award or the Vehicle Award.
196. Span of Hours clauses in Awards are a critical consideration when reviewing the impact that Awards have on the ability for workers to manage their work and care arrangements because they impact on when a worker can be rostered.
197. In Awards with no span or a very broad span of hours employees have very low worker control over being scheduled to work outside of standard (Monday-Friday, daytime hours) and are also compensated less when they do work those hours as they are ordinary hours.
198. Awards that contain a span that is broad and include all 7 days as ordinary hour days of work, need to be addressed to provide some stability and certainty in when an employee can be rostered, and also as a way to restrict when workers are expected to

work.

199. This is also important in awards with no span or 24 hour/7 day ordinary hours as there is no stability and certainty in when an employee can be rostered.
200. Secure work cannot be guaranteed where an employee, even though they are permanent, does not have certainty of rosters or no or limited control over when they will be rostered. In awards that provide for a 7 day working week and a broad span of hours say 7am - 11pm (GRIA) or open 24 hour span (FFIA) the unfortunate reality is the employee can be rostered at any time in that span. Certainty of hours of work for an individual provides security, and for working carers provides some protection against rosters that do not match caring needs.
201. Arranging one's life around generally working 8am to 4pm and then experiencing a 'roster change' to 2pm to 11pm does not provide job security.
202. Unfortunately, the very broad spread of hours has also led to rostering practices that do not support worker carers. Examples of this include 'model' rosters for supervisors and managers that include a certain number of hours that must be worked on evenings and weekends. While we know this blanket approach is a form of indirect discrimination against working carers it is somewhat a result of the expansive span and has consequences for working carers and on gender equality as we see the participation of women decline in supervisory and management roles.
203. Another example is the requirement of workers on lower classifications to work on weekends and evenings because employers argue that this is 'fairer' to everyone, even though it doesn't always match the workers caring needs. We see case after case where employers push roster changes knowing the worker can't work the hours because of carer responsibilities but the employer argues if they work in the industry, they should be able to work across the full span of hours.

*My employer] wants to have a model roster that would require me to work late at night but that's not possible as I am a solo parent. They do not understand that.*

Sole mother, permanent full-time

*Working every weekend is not suitable as my partner works mon-fri therefore time spent with my family can never happen unless I take annual leave for a weekend.*

*Have asked for more regular shifts that is same time each day but not possible. So some days I finish at 6pm the next day 10pm the next 6pm. It is very hard on your body and personal life.*

204. The other issue in relation to a broad or no span is the interaction this has with computerised rostering which we addressed in our submissions above. A broad or non-existent span combined with frequent ‘roster resets’ within the computerised systems is playing havoc on employee’s roster certainty.
205. These automatic computer generated rosters which are ‘efficient time savers’ have reduced the ‘human’ input and decreased control of employees and managers.
206. Employees are also ‘encouraged’ to waive rights to roster protection. Where stores have close to all employees electing to waive a right, pressure is then put on individuals by management, in some cases to meet a KPI or to allow the roster system to operate with less restrictions.
207. In our response above to Question 1 and 8, we referred to a recent study, *Weekend work and work-family conflict: Evidence from Australian panel data*, which looked at whether weekend work is associated with higher levels of work family conflict (WFC) among parents, and whether resources like schedule control mitigate this effect.
208. The study regards ‘work on weekends as a specific (but often overlooked) demand connected to the workers role, which may be incompatible with the parenting role by creating time-based or strain-based conflict’ as it is ‘out of sync with the working schedules of most other persons...as well as the rhythms of school and childcare facilities...and due to “social desynchronisation”...will typically be unable to spend as much time with they’re family as comparable persons working Monday to Friday’<sup>47</sup>.
209. The study suggests there is a positive link between weekend work and strain-based conflict because work is more fragmented, reduces recovery time and work intensity tends to be higher on weekends<sup>48</sup>, which is certainly the case in retail (including Pharmacy), Fast Food and Hair and Beauty.
210. The study highlighted industries such as retail and hospitality because in those industries employers will often require their workers to work on weekends due to

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<sup>47</sup> Laß, I and Wooden, W, *Weekend work and work-family conflict: Evidence from Australian panel data*, J. Marriage Fam. 2022;84:250–272, page 253

<sup>48</sup> Ibid, page 253

customer demand, however, 'Many parents may thus be required to work weekends although this is not in line with their preferences, leading to "work schedule mismatch" (Kalleberg, 2008) and heightened WFC'<sup>49</sup>.

211. The results of the study found that 'Among both genders, weekend workers had significantly higher WFC levels than those who do not usually work weekends'<sup>50</sup>.
212. The study also found that 'WFC rose with both the number of hours usually worked each week and the number of dependent children, and was much higher for those with more than one job, for those with supervisory responsibilities, and for those managing a long-term health condition'<sup>51</sup>.
213. The WFC levels were also higher among those working nights<sup>52</sup>, which highlights the issue of spread of hours for worker carers that includes evening and late night work.
214. In relation to weekend work, the research found that aside from number of working hours, the level of worker schedule control was the most powerful predictor of Work Family Conflict as WFC is particularly high for those who work weekends and simultaneously have little schedule control.<sup>53</sup>
215. In its conclusions, the research found that what is crucial for the combination of work and family is not just the volume of work, but how it is spread out across the week and that schedule control is an important buffer for detrimental effects of weekend work on family life. However, it also found that only around one third of weekend workers had a sufficiently high level of schedule control.<sup>54</sup>
216. The lack of schedule control was addressed earlier in our submissions, which demonstrated that this is the case for workers who are reliant on Awards in retail, fast food, Pharmacy and Hair and beauty.
217. The lack of schedule control and the extremely broad span of hours, or no span at all means that workers can be rostered across the span as ordinary hours and have little control over this.

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<sup>49</sup> Ibid, page 254

<sup>50</sup> Ibid, page 265

<sup>51</sup> Ibid, page 265

<sup>52</sup> Ibid, page 265

<sup>53</sup> Ibid, page 266

<sup>54</sup> Ibid, page 268

*I have worked every Saturday and Sunday for over 11 years unless I have taken annual/personal leave.*

*Working weekends clash with some family functions and activities but that's expected I take an annual leave day to attend.*

*Contracts at my work are weekly not rotating, so if an employee is contracted, they work that same contract every week. This means that if an employee is contracted on the weekend, they must work every weekend unless they request leave. It makes it difficult to be able to catch up with family and friends who work a week day roster or attend weekend social gatherings without needing three weeks prior notice to be able to request the leave. Using paid leave for these occasions also means less paid leave for actual holidays.*

*I have to rely on neighbours to take my kids to training and because I have to work a Saturday, we can no longer go away as a family on the weekends unless I put in annual leave 1 month in advance.*

218. The research found that weekend work was equally detrimental for mothers and fathers, but as for both genders, schedule control proved able to buffer the impact of weekend work.<sup>55</sup>
219. While the research showed no difference in detriment between mothers and fathers, there is still a gender dimension to this issue. Given the fact that women are more likely to have caring responsibilities, including to those other than children, more women are likely to be impacted by this issue.
220. It is also a gender equality issue because male dominated Awards are more likely to have a narrower spread of hours than female dominated Awards which places a restriction and protection against being rostered evenings and/or weekends as ordinary hours. Hours worked outside the span must be agreed by the employee as they are overtime. The only difference may be where shift work provisions are included, however, even where there is a prevalence of shift provisions, they are agreed, attract a higher rate of pay and in most Awards also provide for an additional

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<sup>55</sup> Ibid, page 268

week of annual leave.

221. For evening and weekend workers in feminised industries like retail, fast food, Pharmacy, Hair Dressing and Beauty the expansive or non-existent span of hours results in unfair and unbalanced control by employers over hours of work and no reward (except for penalty rates) or recognition of working shift schedules that are non-standard, that male workers have been compensated for more than a hundred years.
222. When considering the analysis of span of hours in the Discussion Paper, it is clear that the provisions are divided by gender. Below provides a comparison between male dominated and female dominated Awards. With the exception of the Nurses and Aged Care Awards which both have M-F 6am -6pm (60 hours across week) spans, female dominated Awards all have more expansive span of hours (some significantly higher):

<b>Male Dominated Awards</b>	<b>Span</b>	<b>Total no. weekly hours</b>	<b>Female Dominated Awards</b>	<b>Span</b>	<b>Total no. weekly hours</b>
Building Award	M-F 6am -6pm	60	Fast Food	No span	168
Storage Services	M-F 7am – 5.30 pm	52.5	Retail	M-F 7am -9pm Sat 7am - 6pm Sun 9am - 6pm (But most until 11pm)	90 -100
Electrical Contracting	M-F 6am – 6pm	60	Hair and Beauty	M-F 7am – 9pm Sat 7am -6pm Sun 10am – 5pm	88
Manufacturing	M-F 6am – 6pm	60	Pharmacy	Any day 7am to midnight	119
Plumbing	M-F 7am -6pm	55	SCHADS	Mon – Sunday 6am – 8pm	98
Road Transport	M-F 5.30am to 6.30pm	65	Restaurant	No span	168
			Hospitality	No span	168
			Cleaning	No span	168
			Childrens	M-F6am – 6.30pm But longer for broken shifts	62.5
			Clerks	M-F 7am – 7pm Sat 7am – 12.30pm	65.5
			Schools General:	Varies by role	55 to 84
			Health Professionals	Varies by role	60-98

223. This shows a much larger span of hours for Awards covering a more feminised workforce, which raises real concerns when contemplating work and care, and gender

equality outcomes. Span of hours is inextricably linked to rostering and schedule control and must be restricted to ensure workers can work and care.

224. Span of hours provisions should be reviewed to ensure that Awards are meeting the Modern Awards Objective rather than being a reflection of undervaluation of female dominated work.
225. All Awards should contain a relevant span of hours and all Awards currently containing a span which extends beyond standard Monday to Friday daytime hours should be reviewed with regard to the impact on a worker's right and ability to care, security of hours and rostering, and in relation to gender equality.
226. Span of hours should be reviewed to ensure Awards continue to meet the Modern Awards objectives, particularly in relation to providing a fair and relevant minimum safety net of terms and conditions, taking into account:
  - (a) relative living standards and needs of the low paid,
  - (aa) the need to improve access to secure work across the economy,
  - (ab) the need to achieve gender equality by providing equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and providing workplace conditions that facilitate women's full economic participation; and
  - (c) the need to promote social inclusion through increased workforce participation; and
  - (da) the need to provide additional remuneration for:
    - (i) employees working overtime; or
    - (ii) employees working unsocial, irregular or unpredictable hours; or
    - (iii) employees working on weekends or public holidays; or
    - (iv) employees working shifts; and

#### **Recommendation 20**

All Awards should contain a relevant span of hours and all Awards currently containing a span which extends beyond standard Monday to Friday daytime hours should be reviewed with regard to the impact on a workers right and ability to care, security of hours and rostering, and in relation to gender equality.

## **Recommendation 21**

Where Awards retain expansive hours, they should be reviewed to determine if they appropriately recognise and compensate for rostering outside of standard Monday to Friday daytime hours, e.g., overtime, shift rates, allowances and leave.

### **Question 9. Availability and guaranteed regular hours - discussion question: Are there any specific variations to guaranteed hours or availability of hours provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?**

- 227. As discussed in response to Question 1 and Question 8 of the Discussion Paper, SDA members are exposed to low contract base rosters with fluctuating additional hours. This is also impacted by the inability of employers to properly consider commitments and responsibilities of employees outside of work such as caring for others and rostering workers on to work hours outside of their stated availability.
- 228. There is merit to restricting employers' ability to roster workers outside of availability and a breach of this should come with some form of penalty such as the payment of overtime.
- 229. For SDA members covered by all Awards except the Storage Services Award, this is exacerbated by the enormous span of hours provisions, where workers can be rostered to work ordinary hours across the whole week and late into the evening.
- 230. To better protect workers, and especially worker carers from being rostered when they are undertaking other responsibilities like care, Awards should be amended to restrict an employer from requiring employees to work outside of agreed available hours.
- 231. The other issue is that to get more hours, which is commonly desperately needed by low-base contract part-time employees, employees keep themselves available during times of stated availability to ensure they can accept a shift that may or may not be offered. There is no allowance or compensation for keeping availability open.
- 232. This can have an impact on the provision of care, use of personal time and the ability to earn an income through a second job. There should be some form of allowance payable to part-time employees who are required to provide a stated availability to have access to additional hours.



### **Recommendation 22**

Consider varying Awards to restrict an employer from requiring employees to work outside of agreed available hours.

### **Recommendation 23**

Consider including an allowance for part-time employees who are required to give availability for access to additional hours.

#### **Question 10. Overtime, TOIL, and make-up time: Are there any specific variations to overtime, TOIL or make-up time provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?**

233. The only submission we make in relation to this Discussion Question is in regard to overtime. The issues we raise relate to our submission regarding span of hours. The payment of overtime in most of the Awards that cover SDA members are restricted by the non-existing or expansive nature of span of hours clauses. This should be reviewed in line with a review of Span of Hours.
234. The payment of overtime should also be reviewed in relation to additional hours for part-time employees as discussed in our response to Question 1 of the Discussion Paper.

#### **Question 11. On-call and recall to duty - discussion question: Are there any specific variations to on-call or recall to duty provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?**

235. The SDA supports and relies on the submission of the ACTU in relation to this discussion question. On-call and recall to duty are not a common feature in the industries SDA members work in.

#### **Question 12. Travel time: Are there any specific variations to travel time provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?**

236. Historically there hasn't been a lot of use of the travel time provisions in the Awards covering the industries SDA members work in, however, we are seeing the increase in the desire for companies, particularly in retail and fast food to ask employees their willingness to be rostered to work across multiple sites.
237. While Awards typically cover the payment of travel time and costs for additional travel

required between home and the other worksite and back, it doesn't specify payment for travel time and costs if travelling between sites.

238. Allowances including payment for time and cost should be extended to include travel between work sites in addition to the existing entitlement for payment from place of residence to the work site and on return.

#### **Recommendation 24**

Allowances relating to travel time and costs in Awards should extend to travel between work sites.

**Question 13. Annual leave: Are there specific variations to annual leave provisions in modern awards, for example annual leave at half pay, that are necessary to ensure they continue to meet the modern awards objective?**

239. The accrual of and ability to take annual leave is intrinsically linked to how worker carers manage their care arrangements, particularly for children school age or younger. Annual leave is important not only for managing care during times like public holidays when childcare is closed and school holidays but also to support other forms of leave such as personal leave when that is exhausted.
240. The Report demonstrated the level of reliance workers have on leave to enable them to adequately support their care arrangements. The other issue is the impact that taking leave can have on an employees' regular income. For workers who work hours or rosters that attract penalty rates or allowances, when they take leave, they suffer a reduction in pay.
241. While annual leave has somewhat of a savings provision in that employees get a 17.5% loading on ordinary hours of work or their minimum rate plus any penalties, whichever is greater, it is an unfair provision because workers who regularly work more standard hours get an additional payment and workers who regularly work non-standard unsociable hours typically get their usual pay.
242. This unfairness should be remedied by varying Awards so that when employees take annual leave, they get their ordinary hourly rate (including penalties) plus the 17.5% annual leave loading.

243. The SDA has been able to negotiate this in some Enterprise Agreements, however, this should be a minimum standard.

244. This would align with the Modern Awards Objectives that:

Section 134 (1) The Fair work Commission 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:

(a) relative living standards and the needs of the low paid; and

(da) the need to provide additional remuneration for:

(ii) employees working unsocial, irregular or unpredictable hours

(iv) employees working shifts;

245. The adequacy of the quantum of annual leave should also be considered. Four weeks is not a lot of time when taking into account the amount of time worker carers need to provide care that is not covered by annual leave or personal leave.

246. When considering annual leave and where Australia's entitlement is placed in the global context, it is common for OECD countries to provide a statutory minimum of about 20 paid annual leave days. There are examples of more, however, such as the United Kingdom which provides 28 days and Luxembourg (26) of paid annual leave. There are also many countries across Europe with a statutory minimum of 25 days including Austria, Denmark, Finland, Switzerland, France and Sweden. Iceland and Malta have 24 days and Norway 21.

247. Members who responded to the Challenges of work and care survey identified the need to take annual leave for care or family time, especially when they are regular weekend workers:

*Working weekends takes away a lot of family time and also eats into holidays as I take time off in weekends for family time and this reduces my 4 weeks holiday, we use to get time in lieu of public holidays that made up some extra leave but don't get that anymore.*

*You put in availabilities but they don't always check and if you need to go to a appointment it is hard to change your hours . you are told take annual leave*

*I have to work every Sunday to make ends meet...if I need the odd weekend off I have to use up my annual leave as work will not accommodate changing for a weekday now and again.*

248. In Australia there has been a move towards an increase to 5 weeks annual leave, but many examples are within a corporate executive or senior management level. The SDA has recently begun bargaining for additional annual leave and we have had success with this as employers are recognising the need to give their employees more time for rest, recuperation and for spending time with family.
249. More time to rest and recuperate and when care might need to be provided shouldn't be available just for those with enough individual or collective power to ask for it but should be considered as an uplift to the minimum standard.
250. If there is an uplift to the minimum standard to 5 weeks, there should also be an increase to the annual leave entitlement for shift workers to 6 weeks to maintain the relativity in the entitlement.

#### **Recommendation 25**

Awards should be varied so that when employees take annual leave, they get their ordinary hourly rate (including penalties) plus a 17.5% annual leave loading.

#### **Recommendation 26**

The minimum entitlement under Awards for Annual Leave should be increased to 5 weeks (and 6 weeks for shift workers).

#### **Question 14. Personal/carer's leave: Are there any specific variations to personal/carer's leave provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?**

251. Throughout The Report issues were identified by members in relation to the inability to take carer leave, whether it was for the purpose of caring for a child or for an elderly, disabled or ill adult. For some it is because they are casual and have no access to leave, for others it is because they have exhausted their leave entitlements to care for others.

*Both my parents work full-time, so when my children become sick I have no one to help me out. So therefore, I have to call in sick. In the month of February*

*2021, my daughter who attends kinder has caught croup, gastro and a virus, which led to me having a lot of time off - to the point where I had been flagged at work and was on warning for dismissal.*

Partnered mother, permanent part-time

*You can't drop them off [at child care] when they are sick, so I need to use all my personal leave to care for my child. When that runs out, I have to suffer the consequences of not being paid, but I still have to pay for childcare.*

Partnered mother of child with disability, permanent part-time

*With COVID restrictions you need to take much more time off work when your children are unwell, and I am running out of paid leave options.*

Partnered mother of child with disability, permanent part-time

252. There are many aspects of the current entitlement to personal leave that must be improved, particularly noting the prevalence of worker carers and the disproportionate care that is provided by workers in low paid industries and occupations such as retail, accommodation and food services, hair dressing and beauty, pharmacy etc. Worker carers have often already sacrificed their employment because of the need to care, whether it be in relation to their employment type, casual rather than permanent, the classification or type of work they perform or in relation to the number of hours they work. They should not be financially penalised further when needing to provide care.
253. In relation to this Discussion question, there are two improvements that should be considered which would make the entitlement easier and fairer to access.
254. The first is in relation to the rate personal leave is paid. The Report found that SDA members who are also carers live in low- income households. This means that any financial detriment from taking personal leave to provide care for someone, can have a significant impact on their take home pay and their ability to meet their financial needs. This is particularly the case for workers in retail and fast food who rely on penalty rates to make ends meet.
255. The Report found that *'Low hourly rates make penalty rates particularly important to workers' financial security. For this reason, participants were asked how strongly they agreed with the statement "I rely on penalty rates to make a living'.* Half of participants (50%) agreed with the statement, but this was slightly higher among couple parents (54%) and among sole parents (57%) (Table A.16). While 48% of casuals agreed that

they rely on penalty rates, this was also the case for 53% of permanent part-time workers, and 50% of permanent full-time employees (see Appendix Table A.17)<sup>56</sup>. Which means permanent workers are more reliant on penalty rates and given that more of their hours may be stable they would feel the impact of the loss of pay.

256. Given the strong reliance on penalty rates, any reduction in take home pay from taking personal leave, which is paid at the base rate of pay, exclusive of penalty rates, financially punishes those who provide care even though that caregiving benefits not only the person being cared for but society and the economy more broadly.

257. No worker should be financially punished for providing care to others.

*I have to work 3 weekends to make ends meet even though its my permanent roster if I am ill or have to care for family I lose my penalty rates when taking sick leave or personal leave. I don't think this is fair.*

Woman, carer, permanent part-time, 45+ years

*The reduction in take home pay on sick leave or long service leave deters me from utilising either of these to have a break from work to improve my mental wellbeing.*

Woman, carer, permanent part-time, 55+ years

*I have to work 3 weekends to make ends meet even though its my permanent roster. If I am ill or have to care for family I lose my penalty rates when taking sick leave or personal leave. I don't think this is fare.*

Woman Carer, permanent part-time

*Please leave Penalty Rates as is. WE are working the unsociable hours so YOU can be sociable.*

Woman Carer, permanent part-time

*While I'm happy with my weekly wage, I'm not happy when I need sick leave as I lose a lot of money and can make my financial commitments hard to manage, I also believe I should lose penalty rates when using long service, my whole career has been nightshift so why should I be left struggling when using long service.*

Male carer, permanent night shift

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<sup>56</sup> Ibid, page 85

258. This is also an example of an Award provision that needs to be varied to ensure it is meeting the Modern Awards Objectives. This variation to Awards would align with the Modern Awards Objectives that:

Section 134 (1) The Fair work Commission 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:

(a) relative living standards and the needs of the low paid; and

(da) the need to provide additional remuneration for:

(ii) employees working unsocial, irregular or unpredictable hours

(iv) employees working shifts.

259. The recent change to the NES to provide paid family and domestic violence leave includes payment of the entitlement at the rate of pay the employee would have received had they worked the shift. This was in recognition of the fact that the continuation of income was important for workers to enable them to have choice over their situation and to support them to leave without the financial pressure of lost income.
260. Given that a high proportion of carers are low paid, and Award reliant workers are on minimum standards of pay and conditions, it would be fair for the minimum standard for the payment of personal leave in Awards to be at an employee's full rate of pay (inclusive of penalties and loadings).
261. The second issue we will address here is in relation to the current evidence requirements when taking personal leave for caring purposes. Evidence requirements under the Fair Work Act 2009 are quite prescriptive, with employers given the ability to request fresh evidence on each occasion of an absence which can be any evidence that satisfies a reasonable person. This is typically a medical certificate or statutory declaration and can be required for an absence for an employee's own ill health or when caring for someone. This is a burden on those who provide regular care, particularly to someone with a known, ongoing condition.
262. This can be especially difficult when the need for care does not require a medical appointment, but a worker then needs to take the person they care for to the doctors just for the purpose of obtaining a certificate or find time to attend somewhere to get a

statutory declaration signed. This creates a barrier for a worker to utilise the entitlements that are meant to be there to support them to provide care. Getting a GP appointment at short notice is very difficult and is a high-cost burden. Most GPs have an out-of-pocket expense of at least \$38. This is an additional financial punishment for providing care which either falls to the person needing the care or the worker providing the care.

*Managers still make you feel bad for calling in sick or taking personal leave, and sometimes ask for medical certificates which are really hard to get when you're caring for someone.*

Woman, carer, permanent, 26-40 years

263. In cases where the person is known to have a medical condition or is elderly and frail and may need regular or emergency care from time to time, an employee should be able to provide enduring evidence to cover ad hoc absences over an enduring period of time, instead of being required to provide fresh evidence on each occasion. For example, if someone's elderly parent is known to have dementia and requires planned or unplanned care from time to time, the employee shouldn't need to provide a new certificate or statutory declaration each time, an enduring doctor's certificate or letter should suffice.

### **Recommendation 27**

The minimum standard for the payment of personal leave in Awards should be at an employee's full rate of pay (inclusive of penalties and loadings).

### **Recommendation 28**

The evidence requirements for the purpose of carers leave where an employee is caring for a person who is frail or aged or has a long-term disability or illness, should be changed so they can provide evidence for an enduring period of time rather than requiring evidence on each occasion.

**Question 15. Definition of immediate family: Noting the Work and Care Final Report Recommendation 17, that the definition of immediate family should be expanded, are there any specific variations in modern awards that are necessary to ensure they continue to meet the modern awards objective?**

264. Currently the entitlement to personal (carers) leave is restricted to only cover instances



of caring for immediate family members or members of the household. This leaves a gap for those who provide care to others in the community, whether it be extended family, friends and neighbours. Without access to paid leave to provide this care it must be done at an economic cost to the carer.

265. Access to carers leave should be extended to caring for anyone the worker provides care to, regardless of whether they form part of the persons household or immediate family. Families are not singularly defined. People may have different 'family' structures that don't fall into the traditional definition of immediate family and the provision of care to people they recognise as part of their family or community should also be supported.
266. Evidence from The Report shows that workers provide a range of care to many different people in their lives but are unable to access paid leave to do so. The research also tells us that workers rely on others to help them with their care responsibilities and those people also wouldn't always be able to access leave to do so.
267. In The Report, 17% of respondents said they provided care to an older person, 10% provided care to someone with a long-term illness or health condition, and 9% provided care to a person with a disability. Most commonly, care was for an elderly, ill or disabled parent, or parent in-law (18% of participants), but many also provided care for a partner or spouse (4%) or a grandparent (4%) a sibling (3%) or an adult child (2%).
268. Across the sample, 3% were providing regular care for a niece or nephew, and 1% had regular unpaid caring responsibilities for children of friends or neighbours. Others mentioned they were stepparents, foster parents or cousins, and some were caring for multiple children in different kinds of relationships, reflecting the rich and diverse networks of care relationships which SDA members are involved in.
269. To provide an illustrative example, we recently supported a member working in a department store who is the sole carer for her aunt who is 83 years old and has dementia and bowel cancer. She is the registered carer for her aunt as her aunt has no partner or children.
270. The company had been authorising the use of personal leave until her last absence when she had to leave for an emergency for her aunt. She has been denied personal leave for the shift she was absent, and the company have taken it out of her annual

leave instead. Her aunt is now in a home and in palliative care so the ongoing need for leave is limited. Our member has a lot of personal leave available and believes that she should be able to access that instead, as it is a genuine caring need. This is a very good illustrative example of why this provision needs to be extended.

- 271. There are also cultural reasons for this. For example, Aboriginal and Torres Strait Islander peoples have strong family values, and their family system has an extended family structure, as opposed to the nuclear or immediate family structure which is how our legislative entitlements are framed.
- 272. This can be similar to individuals from CALD backgrounds whose family structures may extend beyond the definition of 'immediate family'.
- 273. For the entitlements to be more inclusive and reflective of the different people in our workplaces, their backgrounds and cultures, the definition of immediate family needs to be broader.
- 274. There may be other reasons why an employee may recognize 'immediate family' differently from the usual parent, child, partner, sibling, relative' structure and instead 'immediate family' for them may be a chosen family outside of the strict relative definition. This is common for members of the LGBTIQ+ community.
- 275. The definition of Carer in the Carer Recognition Act 2010 (Cth) is broader than the definition of immediate family under the NES which is what underpins the entitlement to personal leave in the Fair Work Act 2009 (Cth). The SDA recommends that the definition of who a worker can provide care to for the purpose of receiving paid and unpaid personal leave be broadened to that recommended by the Senate Select Committee '

### **Recommendation 29**

Extend the definition of immediate family for the purpose of accessing paid personal leave to include care provided to a person significant to the employee who relies on them for care.

**Question 16. Unpaid carer's leave: Having regard to the Productivity Commission's suggestion for more flexible working arrangements as an alternative to extended unpaid carer's leave, are there any specific variations in the modern awards that are necessary to ensure they continue to meet the modern awards objective?**

276. For some workers providing constant care to an older person, or someone with a disability or temporary or terminal illness a period of absence from work with the right to return to work following the period of care may be of great benefit. It would allow them the time to care, while maintaining their employment. This provision could give workers more choice when it comes to decisions about how they provide care. For some, the ability to return to their job at the end of the time needed to provide care would give them the freedom to make that choice as maintaining employment is a significant factor in the decision.
277. There are many countries that provide longer-term leave entitlements ‘In many countries these longer-term entitlements provide a right to leave for somewhere between two and six months. In Germany, for example, workers can take up to six months to care for a dependent family member in need of long-term care. In some countries (e.g., France, Portugal) employees may in at least some circumstances take leave for up to three or four years. In Japan, the entitlement is set for the cared-for person – each individual has a personal entitlement to 93 days across their own lifetime, which is to be used by the individual’s family members in case of serious illness’<sup>57</sup>.
278. Whilst this may give employees more choice in relation to providing care, if it is unpaid, it may have the unintended consequence of creating another unpaid interruption in work participation for women, who this entitlement will be most used by, and we know that interruptions in paid work have consequences on women’s income, lifetime earnings and retirement savings.
279. To counter the impact, any introduction of extended unpaid carer leave should be linked to genuine consultation between the employee and employer and a positive obligation in relation to accommodating the continuation of work while caring.

### **Recommendation 30**

Include a right to unpaid leave work for workers who need extended leave to care for an older person or someone with a disability or temporary or terminal illness, in Awards, with a right to return to work at the end of the unpaid period. This should be available after genuine consultation regarding options for continued work have been exhausted and the employee

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<sup>57</sup> OECD Family Database <https://www.oecd.org/els/family/database.htm> OECD - Social Policy Division - Directorate of Employment, Labour and Social Affairs *PF2.3: Additional leave entitlements for working parents*, Updated: January 2020

elects unpaid leave.

**Question 17. Personal/carer's leave: Noting Senate Committee Recommendation 18, to consider separating personal/carer's leave entitlement, are there any specific variations in modern awards that are necessary to ensure they continue to meet the modern awards objective?**

280. Carer's Leave forms part of the allocation of personal leave that a worker is entitled to, which is also for the purpose of taking time off in relation to the workers own health. As noted in our submission, many carers are in low-paid work and not well resourced to take periods of unpaid leave to care for others. Many workers, particularly women, who provide regular care also exhaust or significantly reduce their leave balances because of the care they provide to others and have little to support them if they need to take absences that should be available to them when they need it due to their own ill-health.
281. Members responding to our survey highlighted the difficulties around leave, particularly in relation to the amount available to them and for those who are casual and don't accrue leave the incredible hardship having no paid leave results in:

We have to take the day off if she is sick. Who ever has more sick leave takes the day off.

Partnered mother, permanent part-time

*Illness and then not being able to go to work AGAIN but then not being able to pay for day care because you have run out of leave.*

Single mother, permanent part-time

*Sick child- no carers leave*

Mother, casual

*Sometimes they are sick and I don't have enough leave*

Single mother, permanent part-time

282. Current standards of leave are not sufficient to support worker carers, particularly those that are low paid and in insecure employment. Minimum standards under Awards need to be varied to ensure they continue to meet the modern awards objective, and in particular:

Section 134 (1) The Fair work Commission 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:

(a) relative living standards and the needs of the low paid; and

(da) the need to provide additional remuneration for:

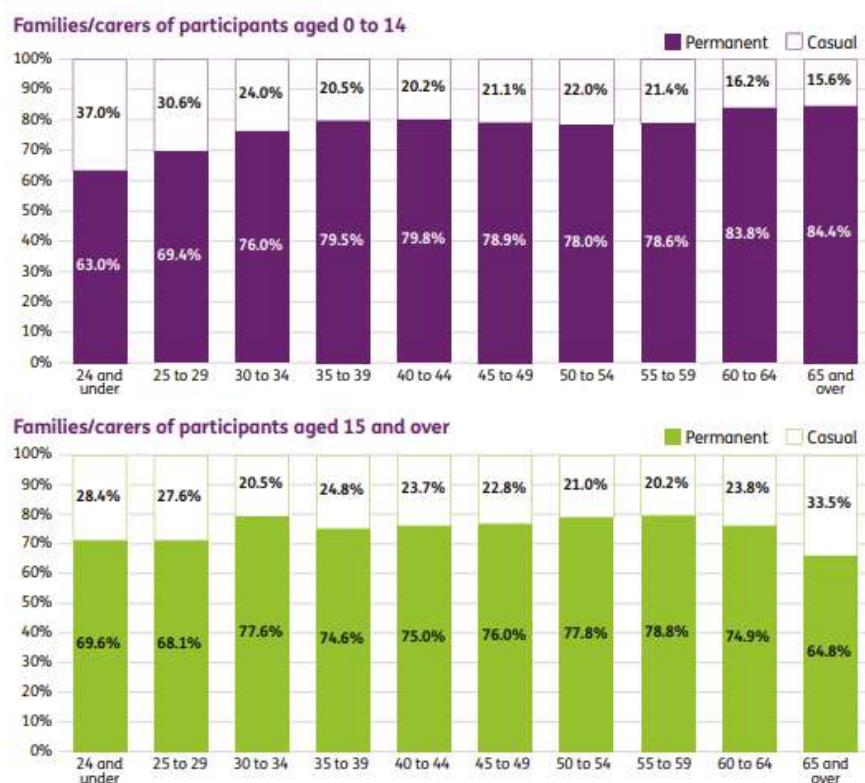
(ii) employees working unsocial, irregular or unpredictable hours

(iv) employees working shifts.

283. Awards should be varied to include a discrete entitlement for 10 days carers leave for the purpose of providing care to someone in an employee's immediate family or household or someone of significance to the employee for whom they are relied on to provide care.
284. This should be in addition to Personal Leave which could be used when an employee is ill or injured, or when carer leave has been exhausted and they need to provide care to someone defined under the carer leave provision.
285. Not only is a lift in the minimum standards of carers leave necessary to meet the Modern Awards Objectives but it is also necessary to meet the Objectives of the Fair Work Act, particularly the addition of the need to promote job security and gender equality.
286. The Report also demonstrates that many SDA members employed as casual workers are providing high levels of care for others. This comes at a cost to their ability to participate in paid work and to their income.
287. Ten percent of mothers surveyed and 11% of fathers are employed on a casual basis. This doesn't include the number of worker carers who are casual and caring for adults or caring for children in another capacity, e.g., as a grandparent or sibling.
288. Data in relation to carers of people receiving assistance through the NDIS indicates that 'The percentage of families/carers working in casual employment (26%) has remained steady between baseline and review, and compares to 15% of Australians aged 25 to 64 overall. The proportion working 30 or more hours per week has risen slightly from 41% at baseline to 43% at review. By contrast, 74% of *Australians aged*

25 to 64 work 35 or more hours per week<sup>58</sup>

289. The 2020 Report from NDIS showed the type of employment by age:



290. This data indicates again the high levels of casual employment among carers compared to the national workforce and the need to ensure that casuals are recognized for their unpaid care contribution and are not exposed to unfair gaps in regulatory entitlements.

291. In response to the Work and Care survey, SDA members who are worker carers employed on a casual basis highlighted the punishing nature of leave entitlements and the additional hardship they face because they have no access to paid leave, in addition to the income insecurity they face due to insecure casual employment. For most carers, it is not a choice.:

*Because I am only given 1 month contracts, I get no sick leave or annual leave. As a single parent, this means that, if one of my disabled children needs to be removed from the school, either due to illness or autistic meltdown, I need to leave work to collect my child, missing out on wages for the remainder of that shift, and any shifts that occur before my child is able to*

<sup>58</sup> NDIS Family/Carer Outcomes, 30 June 2018, page 69

*attend school again. This causes financial stress. If I was able to go on a 12 month, I would be able to accrue leave to relieve some of the stress caused by needing to leave work for a sick child.*

*As a casual, I am apparently compensated within my rate for the lack of sick and annual leave, but find the inconsistency of hours means that I am unable to put anything away for lack of income due to holidays or illness*

*Not having sick leave to take paid time off  
Mother, casual*

*I'm only a casual which means my shifts can be cut without notice and I can't afford to not work or be sick as I don't get sick or annual leave.  
Female, casual*

292. Casual workers should not be penalised financially for the care they provide to others and the economic benefit this contributes to our economy should be recognised. The casual loading is not a sufficient way to support worker carers to manage work and care. Paid carer's leave should be extended to casuals at the rate of pay they would have received had they worked.
293. Recent research into promoting secure work supports the proposal to extend paid leave entitlements to casual employees as a means of promoting more secure work.<sup>59</sup> The paper Promoting Secure Work: Two proposals for strengthening the NES sets out many sound arguments for why entitlements for paid personal leave should be extended to casual employees including:
- (a)** Choice casuals face when ill or need to provide care – sacrificing income or needs of themselves or their families;
  - (b)** Knock on effect of risk of losing future hours or being dismissed;
  - (c)** Workforce resilience – workers attending work when sick because they can't lose income and exposing co-workers to transmission of illness (highlighted during COVID).
  - (d)** Promotion of gender equality – women overwhelmingly worker carers and more likely to be casual – this change would be of most benefit to women and promotion of gender equality (now also a modern awards objective);
  - (e)** The evidence of the need for this demonstrated through the usage of the Victorian Sick Pay Guarantee recognizing the need for reform in this area;
  - (f)** Paid sick leave is a basic entitlement for all employees in many countries

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<sup>59</sup> Campbell, Iain and Charlesworth S, op cit, page 246

(including 10 days for all employees in New Zealand).

294. The paper also explores the casual loading and the impact that any extension of benefits such as paid leave may have on that. The Paper proposes that 'It is sometimes argued that any efforts to increase paid leave entitlements for casual employees must entail a commensurate reduction in the casual loading. We do not agree. The casual loading has a long and distinctive history in Australia. Originally established as compensation for the intermittency of casual work, it is true that it is generally interpreted in recent decades as compensation for exclusion from certain benefits developed for permanent employees, such as paid leave.<sup>110</sup> However, this does not mean that it cannot be retained and reinterpreted as compensation for the many other disadvantages of casual employment. As the FWC warns in a 2017 consideration, the loading does not compensate for the many 'detriments' *associated with casual employment*.<sup>11160</sup>
295. While the Paper talks about a change to the minimum standards in the NES, it reflects that '*regulatory reform to promote secure work needs to intervene most*
296. *forcefully at the level of minimum labour standards. The traditional vehicle for establishing minimum standards in Australia has been the distinctive institution of industrial awards, determined by independent industrial tribunals, most recently the FWC.*<sup>37</sup> *Though awards have eroded and shifted in function in recent decades under the impact of liberalisation, they remain an important arena for maintaining and improving minimum standards.*<sup>3861</sup>
297. The Senate Select on Work and Care also found that the casual loading, where it is paid, does not fully compensate for the many conditions lost, including basic job insecurity, different forms of leave, training, promotion, and career opportunities<sup>62</sup>
298. For similar reasons, leave such as bereavement leave should also be considered in relation to the extension of paid leave to casual employees.

### **Recommendation 31**

Awards should be varied to include a discrete entitlement for 10 days carers leave for all employees for the purpose of providing care to someone in an employee's immediate family or household or someone of significance to the employee for whom they are relied on to

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<sup>60</sup> Ibid, page 254

<sup>61</sup> Ibid, page 241

<sup>62</sup> Select Senate Committee on Work and Care, *Interim Report*, above n 62, at 8.112.



provide care.

This should be in addition to Personal Leave which could be used when an employee is ill or injured, or when carer leave has been exhausted and they need to provide care to someone defined under the carer leave provision.

### **Recommendation 32**

Paid personal leave under Awards should be extended to casual employees.

**Question 18. Ceremonial leave – discussion question: Are there any specific variations to ceremonial leave provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?**

299. The SDA supports the submission of the ACTU in relation to Paid Ceremonial Leave and other provisions that should be considered for inclusion in Awards to better reflect and support the cultural needs of Aboriginal and Torres Strait Islander Include workers.

### **Recommendation 33**

Include in all Awards provision for paid Ceremonial Leave and other provisions to better reflect and support the needs of Aboriginal and Torres Strait Islander workers.

**Question 19. Other variations to modern awards?: Are there any other specific variations to modern award provisions that would assist employees meet their caring responsibilities and are necessary to meet the modern awards objective?**

300. There are other variations that should be considered for inclusion in Awards that would assist employees meet their caring responsibilities.

301. The first relates to a review of the definition of full-time and the 38-hour week with a view to reducing this to 35 hours per week (increase hourly rate to be commensurate with current weekly rate). A reduction in the working week has already become a feature in some countries and is under review in others. This is discussed in the Senate Select Committee on Work and Care Final Report. This is something that should be done in Australia.

302.

303. In line with this, there should also be consideration of the introduction of a 4-day week in Awards. The SDA has recently been successful in bargaining for a 4-day week in Enterprise Agreements with employers recognising the benefits of this for employees and the business alike. This was also discussed in the Senate Select Committee Report and in the Discussion Paper.

#### **Recommendation 34**

Consider the following:

- Reducing full-time to 35 hours per week (at current weekly rates)
- Introducing a 4-day week

304. There should also be a review of the adequacy of Award provisions that relate to parental leave. There is a reliance on the NES for minimum standards, however, as Awards provide a minimum standard for many workers, particularly women, the terms and conditions in Awards should better support women workers.

305. A further inclusion also relates to the care of children, Grandparental Leave. The SDA Who Cares? Report found that SDA members rely heavily on grandparents to provide care. Grandparents were the most common source of non-parental care. SDA members are also grandparents providing regular care (17%) to children. There needs to be more support available to grandparents to enable them to work and provide care to grandchildren. They make a valuable contribution to the informal care of children in Australia.

306. Given that it is most often grandmothers, this form of care is again gendered, and consideration must be given to the fact that women retire on almost half the retirement savings of men and this impact on workforce participation in later stages in life impacts on women's ability to save and contribute to their superannuation.

307. The SDA makes the following recommendations to better support mothers, families and grandparents. This would ensure Awards continue to meet the Modern Awards Objectives.

#### **Recommendation 35**

Under parental leave:

- (a) Inclusion of paid breaks for the purpose of breastfeeding and/or expressing and right to appropriate facilities.
- (b) Periods of parental leave (paid and unpaid) counted as service for accrual purposes.

- (c) Paid pre-natal/pre-adoption/pre-placement leave.
- (d) Grandparental Leave - which would provide for an eligible employee to access 52 weeks unpaid leave for each grandchild during the period up until the child's 5th birthday, with 12 weeks paid.

# Attachment 1

## Individual Flexibility Agreement

This Individual Flexibility Agreement (the Agreement) will commence on 10/05/2021.

The parties to the Agreement are as follows:

The Employee: [REDACTED] (the Employee)

☒ Full time ☐ Part time ☐ Casual

And

The Employer: [REDACTED] Pty Ltd (the Company)

In Accordance with Clause 7 of the General Retail Industry Award 2010 (Award) this Agreement documents variations to the Award freely agreed to between the Employee and the Company.

Under these agreed variations, the Employee will enjoy flexible and guaranteed work hours suited to their individual needs, ensuring they are better off overall under this Agreement.

The Award provisions to be varied are as follows:

### Clause 27 – Ordinary Hours

- (1) In order for the Employee to avoid morning traffic and spend less time on the way to work and back home, and at the same time ensure the shop is properly set up for opening and closing, it has been agreed that the 38 hours per week (for residents and holders of visa with no work limitation) or 20 hours per week (for holders of student visa) within the timeframe below are considered as ordinary hours without triggering overtime payments.

- Monday to Friday: 7:00am – 7:00pm
- Saturday: 7:00am – 7:00pm
- Sunday: 7:00am – 7:00pm

### Clause 29 – Overtime and Penalties

- (1) Clause 29.4(c)(d)(e) – In case within the 38 hours week (for residents and holders of visa with no work limitation) or 20 hours week (for holders of student visa), the only days the Employee is available to work include Saturday, and/or Sunday, and the Employee does not intend to work less than 38 hours a week (for residents and holders of visa with no work limitation) or 20 hours a week (for holders of student visa), penalty rates for all hours worked on Saturday and Sunday shall not apply.

- (2) Clause 29.4(f) – In case within the 38 hours week (for residents and holders of visa with no work limitation) or 20 hours week (for holders of student visa), the only days the Employee is available to work falls on Public Holidays, and the Employee does not intend to work less than 38 hours a week (for residents and holders of visa with no work limitation) or 20 hours a week (for holders of student visa), penalty rates for all hours worked on Public Holidays shall not apply.

Available Days

Please tick the days available for work and put conditions and comments or specify reason for unavailability if any.

- ☒ Monday \_\_\_\_\_
- ☒ Tuesday \_\_\_\_\_
- ☒ Wednesday \_\_\_\_\_
- ☐ Thursday \_\_\_\_\_
- ☒ Friday \_\_\_\_\_
- ☒ Saturday \_\_\_\_\_
- ☐ Sunday \_\_\_\_\_
- ☐ Public Holidays \_\_\_\_\_

This Agreement shall continue to apply unless terminated by either party giving 13 weeks written notice or at any time by written agreement between the parties.



## **Conditions of Employment**

### **Wages**

Wages are paid by bank transfer on Thursday each week for previous week's service.

All details pertaining to the Employee's wages are considered confidential and therefore should not be discussed with other employees. Wages enquiries should be addressed directly to Finance Manager.

### **Superannuation**

The Company will make SGC contributions to the level prescribed by the Superannuation Guarantee Legislation into one of the compliant superannuation fund. If the Employee does not have a superannuation fund to which SGC payments are to be directed, then the Company will pay these contributions into Rest Superannuation Fund (REST Super).

### **Probation Period**

Your appointment will be on a probationary basis for the first 6 weeks, and, subject to satisfactory progress, will be confirmed at the end of that period. The Company reserves the right in certain circumstances to extend the probation period.

### **Work Hours**

The roster you receive shows the time-frame you are supposed to work each day with one hour unpaid break. The maximum hours you work each day is limited to 9 hours within the time frame on the roster.

However, in your role, dependent on work constraints and priorities, you may be expected to work outside these core hours.

### **Public Holidays**

If the Employee works for a number of hours on a Public Holiday, he/she is entitled to the same number of hours in lieu in the following 4 weeks.

### **Confidentiality**

The Company's affairs are to be treated as confidential and are not to be disclosed to unauthorized persons or entities.

At all times you undertake to keep the confidential information of the Company strictly confidential.

### **Notice of Termination**

The Employee must give the Company notice of termination in accordance with the Period of Notice table below.

Period of notice	
Employee's period of continuous service with the company at the end of the day the notice is given	Period of notice
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

The company may terminate your employment without notice for serious misconduct or any other reason which would justify summary dismissal at common law.

### **Training**

The Company may organise and pay for job specific training programs/courses for the Employee when it sees necessary. The Employee is expected to continue his/her service with the Company for a minimum of one year after receiving training provided by the Company.

If the Employee resigns within one year after receiving training, he/she must reimburse the Company for the full cost of training.

### **Annual Leave (not applicable to casual employees)**

Annual leave is four weeks for 12 months service. Annual leaving loading is paid at 17.5% on actual rates.

The Employee is not supposed to take any annual leave accumulated within the first 6 months of employment.



### **Sick/Carer Leave (not applicable to casual employees)**

The Employee is entitled to 10 days sick/carer leave for every 12 months service.

A medical certificate must be provided to your Manager to support application for paid sick leave.

### **Smoking at Work**

[REDACTED] is non-smoking work place.

### **Home Address**

You must keep payroll officer informed of any change in your home address or telephone number or of the person who is to be notified in case of accident or illness.

### **Safety**

Staying healthy and safe at work is very important.

- (1) **Protective shoes**  
You must wear proper protective shoes (with metal cap) while manually lifting/moving stock and/or operating machinery and equipment.
- (2) **Manual handling**  
If you have to manually lift something more than 15kg, you must ask your co-worker to help you.
- (3) **Machinery and equipment**  
You shall receive induction and specific training from your Manager before you operate any machinery and equipment in the workplace. You must strictly follow machinery and equipment operating procedures.
- (4) **Forklift**  
You must have a forklift license to operate a forklift.
- (5) You must declare to the company if you have claimed any payments from work cover while working with your previous employer(s).
- (6) Any damages to the Company's or the Company's leased properties or equipment caused by the Employee's misconduct shall be borne by the Employee.
- (7) You must specify any injuries you had before which prevent you from doing certain tasks at work.



## Appendix A: Rationale for SDA policy positions

### Principles underpinning SDA policy positions

SDA policy is driven by providing value to our members whose work is regulated by a system that has been failing them for decades.

Australians need to be supported by an economic system that has working people at its centre. Our predecessors built an industrial system which provided the foundations for shared prosperity. It is now our responsibility to modernise the industrial framework for the current and future generations. Decades of concerted attacks on our industrial relations system has seen inequality grow, and economic and political power has further concentrated in the hands of a few.

The world of work has changed and will keep changing. There is an unprecedented intersection between work and care. Income and gender inequality have combined to increase disadvantage. Predictable, secure hours of work that provide a living wage are at the centre of decent work. But, there has been growth in insecure work, digitalisation is now a matter of course, and safety concerns have persisted.

We believe that fundamental not incremental change is needed. In contributing to policy, we seek to drive a new system that acknowledges the change that has occurred and will be fit for purpose in the emerging world of work.

The SDA engages in topics that help drive this agenda and we are guided by ten principles that we believe will create value for our members. Those principles are:

1. **Address Inequality & Enshrine Fairness**  
Minimum expectations must be set and adhered to.
2. **Equity & Empowerment**  
All workers must be supported to progress so that no-one is left behind.
3. **Mobility & Security**  
A socially successful economy must provide opportunity for all, regardless of their background. Systems must be built in a way that support success and adaptation in a rapidly changing world of work.
4. **Delivering Prosperity & Growth For All**  
A foundation for prosperity and economic growth must be achieved.
5. **Protection in Work & Beyond**  
Workplaces and the community must be healthy and safe for all workers and their families during and beyond their working lives.
6. **Workers Capital & Superannuation**  
Workers capital and superannuation must be an industrial right for all workers and treated as deferred earnings designed for dignity and justice in retirement.
7. **A Strong Independent Umpire**  
A strong, independent, cost effective and accessible industrial umpire and regulator must be central to the future system of work in Australia.
8. **Protection & Support for Our Future**  
Protecting and supporting our future requires a strong and vibrant retail industry and supply chain providing jobs with fair and just remuneration and contributing to the economy including through skilled workers.
9. **Work & Community**  
Work is a fundamental human activity that provides for personal, social and economic development. Work as it operates in community must build and protect a balance between life at work and life so that workers can contribute to society through the wider community.
10. **Institutional Support for Collective Agents**  
Institutional support must provide for collective agents (registered organisations) so that they are recognised, enshrined and explicitly supported as central to the effective functioning of the system.

Details of specific policy positions can be discussed by contacting the SDA National Office.

