



Modern Awards Review 2023-24

Chamber of Commerce and Industry WA
Submission

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Executive Summary

1. The Chamber of Commerce and Industry of Western Australia (CCIWA) is the peak body advancing trade and commerce in Western Australia.
2. CCIWA is a member-based organisation with around 7,500 members, spanning every sector of the economy, every size of business, and every region across our state. We are committed to developing public policy options that reflect the needs of business, families, and the WA workforce.
3. The Fair Work Commission's (FWC) Modern Awards Review 2023-24 (MAR) is a welcome development, and one we hope leads to substantial improvement in the way awards operate in Australia.
4. Many of our members are captured by the modern awards system and have consistently expressed their concerns and frustration around various aspects of the system, primarily due its complexity and lack of clarity.
5. The complexity of the modern awards system poses significant challenges for businesses, particularly impacting small and medium-sized enterprises (SMEs), across the country including here in Western Australia.
6. The overly intricate nature of these awards makes it exceedingly difficult for many businesses to navigate and remain compliant. This complexity often exceeds the capabilities and resources of smaller entities, leading to inadvertent non-compliance despite genuine efforts to do the right thing and adhere to regulations.
7. The struggle to stay updated with every new iteration of the award is a pressing concern for many businesses. Maintaining compliance requires continuous monitoring and understanding of changes within these awards, which can be particularly burdensome for smaller enterprises lacking dedicated expertise or resources in this field. The resulting confusion and gaps between award provisions and practical applications further exacerbate compliance challenges.
8. The existing provisions within these awards often do not accurately reflect real-world practices or do not achieve what was intended.
9. The impact of the current awards system on businesses can be substantial, with material financial implications. The complexities inherent in these awards impose a burden on businesses, diverting resources and attention away from core operations, hindering growth, and contributing to the financial strain that many businesses are facing, especially in an environment where the cost of doing business continues to escalate.

10. To address these concerns, there is an urgent need for concerted efforts to simplify the modern awards system. Streamlining and simplifying these awards including in structure, length and terminology, as well as making them more user-friendly will significantly alleviate the burden on businesses, especially SMEs, and would mitigate the risks associated with inadvertent non-compliance.
11. In what follows, we provide examples of award provisions that highlight specific issues which have been identified by some of our members operating in these sectors. These examples serve as critical touchpoints that, if addressed through the review process, could significantly contribute to simplifying the modern awards system and ensuring that awards better reflect practical business operations that benefit employees, employers and those relying on the services provided by the relevant sectors.

Social, Community, Home Care and Disability Services Industry Award 2010

Issue: Sleepover Provisions

12. Clause 25.7 of the award provides for 'sleepovers', which is when an employer requires an employee to sleep overnight at premises where the client for whom the employee is responsible for is located and is not a 24-hour care shift. These sleepover arrangements are commonly implemented by employers covered by the award, including those who undertake youth work.
13. The clause also provides provisions around the performance of work before and/or after a sleepover.
14. There is considerable ambiguity and uncertainty as to whether an employee's ordinary hours of work can be arranged such that the performance of work both immediately before a sleepover, and during a separate shift of ordinary hours immediately after a sleepover are able to occur without it resulting in the work being regarded as one continuous shift. As the clause currently stands, this could be interpreted both ways ie either as one continuous shift or two separate shifts with feedback from members indicating that the Fair Work Ombudsman adopts the former interpretation.
15. If sleepover arrangements are intended to be applied as one continuous shift, this would create a significant financial impact on the sector. The provisions would attract penalty rates, and large amounts of overtime would likely lead employers to cease implementing these arrangements due to exorbitant costs that would arise.
16. This would then have significant impact on the services being delivered and could in fact, prevent some services from being delivered.

17. By way of example, services in and around youth work are particularly at risk. When it comes to youth work, other models such as rosters, do not meet the needs of clients (ie children). The continuous presence of the same employee over an extended duration is often vital. If this arrangement was categorised as a continuous shift, this would be an unviable option for many service providers, who would be unable to sustain the costs associated with these arrangements.

Recommended Proposal

18. Clause 25.4 should, therefore, be varied in such a way that the ambiguity and uncertainty is removed, and to make clear that:
 - 18.1. Periods of work on either side of a sleepover may be organised by an employer such that they stand alone, as separate shifts, each constituting ordinary hours; and
 - 18.2. A sleepover constitutes a break between shifts, including for the purposes of clause 25.4(b) of the Award.
19. By varying the awards as per paragraph 18, employers would have more clarity and certainty that these arrangements can be implemented without incurring a disproportionate shift penalty or requiring the routine performance of significant periods of overtime that would result in unsustainable costs. This would also give clarity and certainty to employees and other stakeholders as to the obligations and entitlements that arise from such working arrangements.
20. Furthermore, it would enable workers, who prefer these working arrangements, to continue doing so as employers would be more inclined to keep such arrangements in place.
21. It would also have a positive impact on businesses in this sector by reducing payroll costs and ensuring ongoing care for clients.

Issue: Meal Breaks

22. For some care providers, there are situations where there is only one employee rostered on to complete a shift, whether this be an active overnight shift or during an ordinary shift, which means staff are unable to leave the premises to take their meal break (as this would be in breach of their duty of care to their clients).
23. For staff to be able to take their usual meal break, there are two options: two employees would need to be rostered on to accommodate this, which adds significant additional costs beyond what is required from a care point of view, or the service provider would need to employ an additional employee to act as a 'roving meal break reliever' that goes from one place of care to another so that someone can remain with the client while the employee takes their meal break.

Both options present unviable options, due to coordination challenges and significant additional costs for service providers.

24. By way of example, one care provider explained that depending on the salary level and arrangement in place, this could add between \$140,000 and \$354,000 annually to their operating costs.¹
25. In addition, meal break times are also unpredictable, and staff may not always eat with a client. This leaves considerable uncertainty around what employees are entitled to when it comes to a paid or unpaid meal break.

Recommended Proposal

26. To avoid confusion and mitigate the risk of inadvertent non-compliance, clause 27.1(c) should be substituted with the following to allow for a paid meal break during the scenarios outlined below:

27.1 Meal breaks

(c) Where an employee is required by the employer to have a meal with a client or clients as part of the normal work routine or client program, or an employee is required by the employer to be present and awake overnight with a client or clients, and there is time to take a meal break, they will be paid for the duration of the meal period at the ordinary rate of pay, and clause 27.1(a) does not apply. This paid meal period is to be counted as time worked.

Issue: Part-Time Work

27. Clause 10.3(c)(ii) and clause 10.3(f) place some strict restrictions around when a part-time employee can work, and the lack of flexibility around current provisions can cause significant issues when shifts are cancelled, and/or the service provider requires an employee to work slightly longer (due to a relieving employee who is late).
28. Clause 10.3(c)(ii), which prescribes exact start and finish times within which the part-time employee is required to work, makes it difficult to have an employee cover a cancelled shift. To do so would require varying their agreement in writing, which is impractical given that cancelled shifts would likely come with very little advanced notice. These provisions can also have perverse outcomes, including in the form of cancelling client services.

¹ For example, if a secondary or roving employee were employed to provide coverage for the first employee, then this would be an additional \$158,000/year (if at level 2.1) or \$177,000/year (if at level 3.1) (including Saturday, Sunday and public holidays for an 8-hour shift). Further, since one person cannot work all 7 days in a week, service providers would have to hire two additional employees to perform this role, essentially doubling that cost. Costs would reduce if shifts were shorter.

29. In addition, clause 10.3(f), which prevents employers from requiring part-time employees to work additional hours in excess of their guaranteed hours, means part-time employees are unable to provide for coverage in unexpected situations (eg the relieving employee being late). This again creates perverse outcomes, including potentially leaving vulnerable people without care for a period of time.

Recommended Proposal

30. To ensure that client services can be delivered when needed, we suggest that clauses 10.3(c)(ii) and 10.3(f) be substituted with the following to allow for more flexibility around a part-time employee's guaranteed hours:

10.3 Part-time employment

(c) Before commencing employment, the employer and employee will agree in writing on:

(ii) the days of the week the employee will work and the starting and finishing times each day.

(f) An employee may agree to work hours that are additional to their guaranteed hours.

Issue: Notice of Roster Changes

31. Clause 25.5(d)(i), which states that seven days' notice is required to change a roster, currently conflicts with the requirements in clause 8A and clause 10.3(e).
32. Clause 8A first requires an employer to consult with the employee if there are any proposed changes to the regular roster or ordinary hours of work of that employee and clause 10.3(e), which relates to part-time employees specifically, requires that any variation to the agreement involving the part-time employee's guaranteed hours must be agreed on in writing by both parties.

Proposal

33. To avoid confusion and ensure that clause 25.5(d) aligns with the requirements for consultation and agreement between employers and employees, we suggest that clause 25.5(d)(i) be substituted with the following:

25.5 Rosters

(d) Change in roster

...

(ii) Following consultation, 28 days' notice will be given of a change in a roster.

Issue: 10-Hour Break Requirement

34. As cost pressures on households increase, employees are increasingly asking for additional shifts, including overtime. However, the current provisions in the award prevent the employer from allocating additional hours, due to the 10-hour break requirement between shifts.
35. Additionally, employees are increasingly asking to cash out more than 2 weeks' annual leave within a 12-month period to address financial hardship. However, the award prevents them from doing so, prescribing that employees can only cash out a maximum of 2 weeks' of accrued paid annual leave in any 12-month period.

Recommended Proposal

36. To better support employees experiencing financial hardship, clause 25.4 should be substituted with the following:

25.4 Rest breaks between rostered work

(a) An employee will be allowed a break of not less than 8 hours between the end of one shift or period of work and the start of another.

(b) Remove part (b)

37. Additionally, clause 31.5(h) should be removed to enable employees to cash out any amount of annual leave providing they retain a 4-week accrual.

Issue: Training

38. Clause 25.10(c)(i)(D) currently prescribes that where staff are required to participate in staff meetings or staff training remotely, they must be paid a minimum payment equivalent to one hour's pay. However, online training modules and/or staff meetings can often be less than one hour in duration, which imposes additional unnecessary costs on employers.

Recommended Proposal

39. To reduce the additional unnecessary costs borne by employers, clause 25.10(c)(i)(D) should be substituted with the following:

25.10 Remote work

(c) Minimum payments for remote work

(i) Where an employee performs remote work, they will be paid for the time spent performing remote work, with the following minimum payments applying:

....

(D) where the remote work involves participating in staff meetings or staff training remotely— the duration of the activity will be paid.

Issue: Time Off In Lieu

40. Clause 28.2 currently prescribes when time off in lieu (TOIL) can be taken. Employees are increasingly asking employers to hold accrued TOIL for longer than three months to use for future planned absences, or at a time more convenient to the employee, but are unable to do so due to the prescriptive nature of these provisions.

Proposal

41. To provide more flexibility around when accrued TOIL can be taken, clauses 28.2(d)(i), 28.2(d)(ii) and 28.2(f) should be substituted with the following:

28.2 Time off instead of payment for overtime

(d) Time off must be taken:

(i) within the period of 12 months after the overtime is worked; and

(ii) at a time or times within that period of 12 months agreed by the employee and employer.

...

(f) If time off for overtime that has been worked is not taken within the period of 12 months mentioned in paragraph (d), the employer must pay the employee for the overtime, in the next pay period following those 12 months, at the overtime rate applicable to the overtime worked, based on the rates of pay applying at the time payment is made.

Hospitality Industry (General) Award 2020

Issue: Pay Guides

42. The Pay Guide included in this award lacks clarity and specificity, omitting key positions such as Porters and Housekeeping roles which are commonly utilised in hotels.

Recommended Proposal

43. We recommend updating the Pay Guide by providing a comprehensive listings of job titles within the hospitality sector, including common positions like Porters and Housekeeping staff to ensure accurate wage guidance.

Issue: Outer limits and annualised salary calculations

44. The calculation process for outer limits and associated requirements, which feeds into the annualised salary amount, is convoluted and challenging to comprehend, creating uncertainty for business and increases their compliance costs.

Recommended Proposal

45. We recommend simplifying the outer limits calculation methodology and associated requirements to make it more transparent and user-friendly. Providing clearer guidelines and examples can assist businesses in remaining compliant.
46. Developing and providing an online or accessible calculator to assist employers in calculating annualised salaries would also be beneficial as this would facilitate more accurate and efficient wage management.

Issue: Capped casual hours

47. The restriction of casual hours to a 38-hour weekly cap adversely affects employees' opportunities for additional work. As noted above, due to financial hardship, employees are increasingly seeking additional hours, but employers are unable to provide as these additional hours would then be classified as overtime.

Recommended Proposal

48. We recommend re-evaluating the hourly cap for casual employees to accommodate employee requests for reasonable additional hours. Similarly, it is also vital to consider adjustments to overtime rates to incentivise offering extra work without imposing an unsustainable financial burden on businesses.

Issue: Notice periods

49. The duration of notice employees must provide is considered inadequate relative to their length of employment.

Recommended Proposal

50. We recommend reviewing and extending the notice periods required from employees in consideration of their tenure, ensuring fairness and adequate time for both parties in employment termination scenarios.

Concluding remarks

51. The review of these modern awards represents a crucial opportunity to address the complexity that has challenged and frustrated businesses, especially SMEs, for many years. Simplifying these awards and aligning them with actual industry

practices would reduce the compliance burden on businesses that are simply striving to adhere to constantly changing regulations.

52. The proposed variations and adjustments recommended in this submission aim to ensure that these awards better reflect the practical realities within workplaces, and also minimise the risk of inadvertent non-compliance by providing more clarity and sense-making to certain provisions.
53. By simplifying and aligning awards with industry practices, it creates a more favourable environment for employers, employees, and the wider community. It also facilitates more efficient business operations, ensures fair working conditions, and enhances service quality.
54. Notably, the recommendations in this submission represent marginal improvements to the awards system. CCIWA maintains its view that a much broader effort is required to substantially simplify the awards system.