

IN THE FAIR WORK COMMISSION

Matter No: AM2016/15, AM2014/69

Section 156 - Four Yearly Review of Modern Awards –Plain Language redrafting – *Cleaning Services Award 2010*

SUBMISSION OF UNITED VOICE

1. This submission concerns technical and drafting issues in the plain language redrafting exposure draft of the *Cleaning Services Award 2010* ('Cleaning Award'). This submission is made pursuant to the Directions issued on 19 September 2017.

Clause 8. Types of employment

2. The plain language exposure draft has altered the language of the types of employment clause in a way that alters the legal effect of the provision. Clause 8.2 of the plain language draft removes the obligation on the employer to inform each employee of their usual location of work and classification, and of the obligation to record this information in the time and wages record of the employee. The relevant clauses are set out in the table below:

Current Cleaning Award	Cleaning Award plain language draft
12.2 At the time of engagement, an employer will inform each employee of the terms of their engagement and in particular whether or not they are to be full-time, part-time or casual, their usual location of work and the employee's classification. This will then be recorded in the time and wages record of the employee.	8.2 At the time of engaging an employee, an employer must inform the employee of the terms on which they are engaged, including whether they are engaged as a full-time, part-time or casual employee.

3. Employees covered by the Cleaning Award tend to be low-paid and from non-English speaking backgrounds. There is already significant non-compliance with award conditions in the cleaning industry.
4. Employees who are provided with information about their classification are better equipped to check their award entitlements to confirm if they are being correctly paid.

5. Employees who are provided with information about their usual location of work have greater certainty regarding their working conditions.
6. Ensuring employers have an obligation to record information regarding the employee’s type of employment, classification and location of work in a time and wages record assists in reducing underpayment and ensuring correct records are maintained.
7. Overall, the current obligations on an employer in clause 12.2 of the current award provide a measure of protection and certainty for employees, and assist in ensuring award compliance.

Clause 10. Part-time employment

8. The plain language draft alters the manner in which a part time employee may work ordinary hours. The relevant clauses are set out in the table below:

Current Cleaning Award	Cleaning Award plain language draft
<p>12.4 (b) A part-time employee is an employee who:</p> <p>(i) is engaged to work less than the full-time hours of 38 per week;</p> <p>(ii) has reasonably predictable hours of work;</p> <p>and</p> <p>(iii) receives, in addition to the hourly rate for a full-time employee, an allowance of 15% of the hourly rate. This allowance allows the employer to roster a part-time employee to work up to 7.6 hours per day, five days per week or 38 ordinary hours per week without the payment of overtime.</p>	<p>10.2 An employer must pay a part-time employee for each ordinary hour worked a loading of 15% on top of the minimum hourly rate specified in column 3 of Table 2—Minimum rates for full-time employees.</p> <p>NOTE: The part-time loading is payable so as to allow the employer to roster a part-time employee to work up to 7.6 hours per day or 5 days per week or 38 ordinary hours per week without the payment of overtime.</p>

9. Clause 12.4(b)(iii) of the current award allows an employer to roster a part-time employee to work up to ‘7.6 hours per day, five days per week or 38 ordinary hours per week without the payment of overtime.’ The plain language draft amends this to ‘7.6 hours per day or 5 days per week or 38 ordinary hours per week without the payment of overtime.’
10. The plain language draft version could potentially lead to a belief that a part time employee may be rostered on to work 7.6 hours across 6 days without an entitlement to overtime.

11. The NOTE in clause 10.2 should be amended as follows: *'The part-time loading is payable so as to allow the employer to roster a part-time employee to work up to 7.6 hours per day, 5 days per week or 38 ordinary hours per week without the payment of overtime.'*

Clause 15. Work Organisation

12. The plain language draft has amended the wording of the work organisation clause in a way that alters the legal meaning. The relevant clauses are set out in the table below:

Current Cleaning Award	Cleaning Award plain language draft
15.2 Despite an employee's classification, an employee is to perform all duties incidental to the tasks of the employee that are within the employee's level of skill, competence and training.	15. An employer may require an employee to perform duties across the different classification streams set out in Schedule A—Classification Definitions that they are competent to perform.

13. Under the current award, an employee may be required to perform duties outside of their classification where such duties are *'incidental'* to their tasks.
14. Under the plain language draft, an employee may be required to perform duties across the different classification streams that they are competent to perform, without limitation.
15. This could potentially lead to employees being required to perform duties outside of their classification on a regular basis without adequate compensation.
16. The current award clause should be retained.

Clause 16. Minimum Rates

17. The plain language draft clause removes the recognition that minimum weekly wages are exclusive of penalties and allowances. The relevant clauses are set out in the table below:

Current Cleaning Award	Cleaning Award plain language draft
16.1 An employer must pay full-time employees minimum weekly wages for ordinary hours (exclusive of penalties and allowances) as follows:	16.1 An employer must pay a full-time adult employee the minimum weekly rate specified in column 2 in accordance with the employee classification specified in column 1 of Table 2—Minimum rates for full-time employees.

18. The current clause clearly identifies that minimum weekly wages are exclusive of penalties and allowances. The plain language draft no longer states this.
19. United Voice has concerns that there are already significant levels of non-payment of penalties and allowances within the cleaning industry. Removing the clear statement that minimum wages are exclusive of penalties and allowances from the award may make the entitlement to penalties and allowances less clear, and may increase levels of non-compliance with the award.
20. Clause 16.1 should be amended as follows: *'An employer must pay a full-time adult employee the minimum weekly rate (exclusive of penalties and allowances) specified in column 2 in accordance with the employee classification specified in column 1 of Table 2—Minimum rates for full-time employees.'*

Clause 18. Payment of Wages

21. Under clause 18 of the plain language draft, the entitlement of employees who are paid by cheque to receive payment for waiting has been removed. The relevant clauses are set out in the table below:

Current Cleaning Award	Cleaning Award plain language draft
20.3 Where an employee is paid by cash or cheque and the employee is left waiting at the workplace to be paid, the employee will be paid at ordinary rates for the duration spent waiting at the workplace for payment.	18.4 An employee paid by cash who has to wait at the workplace to be paid is entitled to be paid at the employee's minimum hourly rate for any time spent so waiting.

22. Whilst payment by cheque may not be the most common form of payment, it is still used as a method of payment in the industry and such employees should still retain their entitlement to payment if they are required to wait for their cheque.
23. Clause 18.4 should be amended as follows: *'An employee paid by cash or cheque who has to wait at the workplace to be paid is entitled to be paid at the employee's minimum hourly rate for any time spent so waiting.'*

Clause 21. Allowances

24. The plain language draft alters the language regarding the payment of allowances. The current award language regarding allowances is clearer and more direct than the proposed plain language draft. The relevant clauses are set out in the table below:

Current Cleaning Award	Cleaning Award plain language draft
17 An employer must pay to an employee such allowances as the employee is entitled to under this clause at the following rates.	21.1 Clause 21 gives employees an entitlement to monetary allowances of specified kinds in specified circumstances.

25. The phrasing in the current clause 17, which states that ‘*an employer must pay to an employee such allowances*’, is more direct and simple to understand than the words in the plain language clause 21.1, which states that ‘*clause 21 gives employees an entitlement to monetary allowances*’.

26. As stated in paragraph 3 of this submission, Cleaning Award employees tend to be low-paid and from non-English speaking backgrounds. As such, clear, direct and simple phrasing is particularly important for employees in this and similar industries. Stating that ‘*an employer must pay to an employee such allowances*’ clearly identifies that there is an obligation on the employer to pay.

27. The current wording in clause 17 of the Cleaning Award should be retained.

Clause 21.10 Meal Allowance

28. The plain language draft amends the legal effect of the clause and alters the circumstances in which an entitlement to a meal allowance arises. The relevant clauses are set out in the table below:

Current Cleaning Award	Cleaning Award plain language draft
17.6 Meal allowance An employee required to work an additional two hours without being notified on the previous day or earlier that they will be so required to work will be paid a meal allowance of \$12.79 or supplied with a meal instead.	21.10 Meal allowance (a) Clause 21.10 applies to any employee who: (i) is required to work overtime of more than 2 hours; and (ii) was not advised of that requirement on or before the previous day.

29. Under the current award, the entitlement to a meal allowances arises when an employee is required to work an *additional* two hours without being notified before the previous day.
30. Under the proposed plain language draft, the entitlement arises when an employee is required to work *overtime of more than* two hours without being notified before the previous day.
31. Not all circumstances under which additional hours are worked will constitute overtime. For example, a casual employee who is rostered to work 20 hours across the week may be asked to work 2 additional hours on one shift without having been notified earlier. Under the current clause this employee would be entitled to a meal allowance. Under the plain language draft this employee may not be entitled to a meal allowance as the additional hours may not be hours that would be paid as overtime.
32. Under the current award, an entitlement to a meal allowances arises once an employee has been required to work an additional 2 hours. The plain language draft has reduced an employee's entitlement to a meal allowance, by requiring that an employee be required to work '*more than*' two hours before the entitlement arises.

33. Clause 21.20(a) should be amended as follows:

21.10 Meal allowance

(a) Clause 21.10 applies to any employee who:

(i) is required to work 2 additional hours; and

(ii) was not advised of that requirement on or before the previous day.

Clause 23. Overtime

34. The plain language draft award alters the circumstances in which a part time employee is entitled to overtime. The relevant clauses are set out in the table below:

Current Cleaning Award	Cleaning Award plain language draft
28.6 All time worked in excess of 7.6 hours per day, five days per week or 38 hours in any week by a part-time employee is overtime.	23.1 (b) An employer must pay a part-time employee for any time worked in excess of 7.6 hours per day or 5 days per week or 38 hours per week.

35. As raised above in our concerns regarding Clause 10. Part Time Employment, the plain language draft version could potentially lead to a belief that a part time employee may be rostered on to work 7.6 hours across 6 days without an entitlement to overtime.
36. The clause 23.1(b) should be amended as follows: *'An employer must pay a part-time employee for any time worked in excess of 7.6 hours per day, 5 days per week or 38 hours per week.'*

Clause 25. Annual leave (shift workers)

37. The plain language draft alters the legal effect of the clause and significantly reduces the number of employees who would be defined as shift workers under the Cleaning Award. The relevant clauses are set out in the table below:

Current Cleaning Award	Cleaning Award plain language draft
<p>29.2 Definition of shiftworker</p> <p>(a) For the purposes of the NES, a shiftworker is an employee: (i) who works a roster and who, over the roster cycle, may be rostered to work ordinary shifts on any of the seven days of the week; and (ii) who is regularly rostered to work on Sundays and public holidays.</p>	<p>25.2 Additional paid annual leave for certain shiftworkers</p> <p>(a) Clause 25.2 applies to an employee who is a shiftworker regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for 7 days a week.</p> <p>(b) The employee is a shiftworker for the purposes of the NES (entitlement to an additional week of paid annual leave).</p>
<p>29.2 (b) Where an employee with 12 months' continuous service is engaged for any part of the 12 month period as a shiftworker, that employee must have their annual leave increased by one half day for each month the employee is continuously engaged as a seven day shiftworker, provided that a limit of 10 months in any year will be counted towards the additional leave accrual.</p>	<p>N/A</p>

38. There is no requirement under the current award that a business must be continuously operating 24 hours a day for 7 days a week in order for an employee to be defined as a shift worker.

39. The added requirement within clause 25.2(a) of the plain language draft award is a substantive change and would significantly reduce the number of employees who would be defined as shift workers under the Cleaning Award.
40. The current definition of shift worker in clause 29.2(a) of the Cleaning Award should be retained.
41. Further, clause 29.2(b) of the current award contains a specific entitlement for employees who work part of the year as a shift worker. This entitlement is not contained in the plain language draft of the award, nor is it a general entitlement under the National Employment Standards. Removing the clause would disadvantage employees who work part of the year as a shift worker by reducing their entitlements to annual leave.
42. The current entitlement to accrual of annual leave for employees who are engaged for part of the year as shift workers in clause 29.2(b) should be retained.

Clause 25. Annual leave (temporary close-down)

43. The plain language draft removes entitlements for employees in regards to a temporary close-down period. The relevant clauses are set out in the table below:

Current Cleaning Award	Cleaning Award plain language draft
29.6 Annual close-down (d) The close-down period will be limited to four weeks, plus any public holidays that fall during the period of the close down.	25.4 Temporary close-down N/A
(e) Public holidays that fall within the period of close-down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.	N/A

44. The current award provides that the close-down period will be limited to four weeks. The plain language draft has removed any reference to this.
45. Having no set limitation on the length of a temporary close-down period would disadvantage employees, as they could be required to use their annual leave entitlements or be on leave

without pay for a longer period of time. Having a set limitation of four weeks on a temporary close-down period provides a measure of protection and certainty for employees.

46. Under the plain language draft award, a temporary close-down period could continue for an indefinite time period.
47. The current clause 29.6(d) should be retained.
48. The current award, in clause 29.6(e), provides that public holidays that fall within the period of the close-down period will be paid. There is no equivalent entitlement in the plain language draft.
49. Whilst the National Employment Standards do provide that public holidays that fall within a period of annual leave will be paid as a public holiday, there is no such provision regarding public holidays that fall within a period of leave without pay.
50. If the entitlement in clause 29.6(e) is removed from the Cleaning Award, an employee who is on a period of leave without pay during a temporary close-down period would lose their entitlement to be paid for public holidays during that period.
51. The current clause 29.6 (e) should be retained.

Clause 32. Consultation about change of contract

52. The plain language draft has removed the words *‘including a relevant union’* and in doing so, has removed direct acknowledgement that a union may be involved in the process regarding consultation about change of contract. The relevant clauses are set out in the table below:

Current Cleaning Award	Cleaning Award plain language draft
9.5 The incoming contractor must, as soon as practicable after making any offer of employment to employees of the outgoing contractor, provide notification of the offer being made and the terms of the offer to the outgoing contractor and to any representative, including a relevant union, nominated by the employee.	32.8 The incoming contractor must, as soon as practicable after making any offer of employment to employees of the outgoing contractor, give written notice of the offer and its terms to the outgoing contractor and to any representative nominated by the employee.

53. Unions play an important role in consultation processes within workplaces, and can provide crucial assistance to employees during consultations regarding change of contracts.
54. The current award recognises this, whereas the plain language draft award contains no equivalent provision.
55. The current clause 9.5 should be retained.

Clause 34. Dispute Resolution Procedure Training Leave

56. Clause 34.6 refers to leave under '*clause 11*'. This appears to be an error.
57. Clause 34.6 should be amended so that the reference to '*clause 11*' is replaced with a reference to '*clause 34.*'

**UNITED VOICE
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