

IN THE FAIR WORK COMMISSION

Matter No: AM2016/15, AM2014/89

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

SUBMISSION IN REPLY OF UNITED VOICE

1. This submission concerns technical and drafting issues in the plain language redrafting exposure draft of the *Security Services Industry Award 2010* ('Security Award'). This submission is made pursuant to the Directions issued on 19 September 2017. This submission is made in reply to the submission of Australian Business Industrial (ABI) and the NSW Business Chamber Ltd (NSWBC) filed on 12 October 2017 and the submission of the Australian Security Industry Association Limited (ASIAL) filed on 6 October 2017.

Clause 2. Definitions

2. ABI have submitted that the word '*usually*' should be retained in within the definition of '*cash-in-transit*'. We agree.
3. ASIAL have submitted that clause 2.2 of the current award, which is commonly referred to as the 'absorption clause', should be retained. We oppose this submission.
4. Our submission in reply filed 22 June 2017 in the plain language re-drafting of the *Hospitality Industry (General) Award 2010* and the *Restaurant Industry Award 2010* addressed the issue of the absorption clause and we reproduce the relevant information here.
5. On 30 September 2015, in the decision *Four yearly review of modern awards* [2015] FWCFB 6656, the Full Bench decided to delete the absorption clause from all modern awards. The Full Bench found that the absorption clause was '*intended to be transitional in character*' and was not intended to operate beyond the transitional period.¹ Now that the transitional period is over the Commission has no power to include the absorption clause in the modern award. The clause is neither a term permitted by s 139(1) of the *Fair Work Act 2009* (Cth) ('the Act') nor an 'incidental' term permitted by s 142(1).²
6. Moreover, the absorption clause is not necessary to meet the minimum wages objective. It is not the function of modern awards to regulate the interaction between minimum award

¹ [2015] FWCFB 6656, [27] and [36]-[37].

² [2015] FWCFB 6656, [56].

entitlements and overaward payments. This is dealt with by the common law principle of set off.³

7. ASIAL have submitted that the definition of '*default fund employee*' should be retained. We disagree, as it is unnecessary.
8. ASIAL have submitted that the definition of shift workers should be included in the definitions of the plain language draft. We do not object, provided that the definition inserted is that in clause 24.2 of the current award.

Clause 4. Coverage

9. ABI have submitted that wording has been omitted from clause 4.2 and added to clause 4.3. We do not object to ABI's proposed changes to clauses 4.2(a) and (b), and clause 4.3.
10. ASIAL have submitted that the term '*control room*' has been omitted from clause 4.2(d). We support retaining the wording in clause 4.2(d) of the current award.

Clause 6. Individual Flexibility Agreements

11. ASIAL have submitted that clause 6.4(a) should be amended. We disagree.
12. The wording of a number of standard clauses, including this clause, has been addressed within the modern award review process. On 28 August 2017, in the decision *4 yearly review of modern awards – Plain language – standard clauses* [2017] FWCFB 4419, the Commission made a determination regarding the wording of the individual flexibility agreements clause. Clause 6 in the plain language draft reflects the wording in this decision.
13. ASIAL have submitted there is an incorrect reference to clause 6.9 in clause 6.8. We agree.

Clause 10. Part time employment

14. ABI and ASIAL have submitted that they have concerns with the plain language re-drafting of clauses 10.4 and 10.5. We support retaining current award clause 10.4(a)(iii).
15. ASIAL have submitted that clauses 10.5 and 10.6 restrict employers from engaging part time employees on a roster cycle in the same way that would be available for full time employees. The plain language redrafting process is not the appropriate avenue to pursue changes to how part time employees may be engaged. Further, ASIAL have submitted that clauses 10.5 and 10.6 are inconsistent with clause 10.1. We disagree.

³ [2015] FWCFB 6656, [74].

16. Clauses 10.5 and 10.6 of the plain language draft appropriately reflect existing entitlements in clause 10.4(b) of the current award.
17. ASIAL have submitted that clause 10.9 should reflect the current wording. We prefer the wording in the plain language draft.

Clause 12. Classifications

18. ASIAL have proposed an amendment to clause 12.1. We disagree as it is not necessary.
19. ASIAL have submitted that clause 12.3(d) should retain the words '*and as a result cannot carry out a security activity*'. We prefer the wording in the plain language draft.

Clause 11. Casual employment

20. ABI have proposed an amendment to the wording in clause 11.3 regarding casual loading. We would support retaining the wording in the clause 12.5(a) of the current award which states "*an additional loading of 25%*".

Clause 13.3 Shift Duration

21. The Commission has made a note that clause 13.3(a)(ii) may restrict flexibility in rostering arrangements.
22. ABI have submitted that clause 13.3(a)(i) of the plain language draft has the same effect as clause 21.2(a)(iii) of the current award.
23. Our reading of clause 13.3(a)(ii) is that it has the same legal effect as clause 21.2(a)(iii) of the current award and does not change flexibility in rostering arrangements.
24. ABI submits that the reference to '*union*' in clause 13.3(d) should be removed. We disagree.
25. Unions can provide crucial assistance to employees during discussions regarding the length of shifts, and the plain language draft merely acknowledges the representative role unions undertake in the workplace.
26. ABI has proposed wording for clause 13.3(h) which involves altering the words '*broken shift*' to '*this is a broken shift*'. We agree.
27. ASIAL has submitted that clause 13.3(c) should reinstate the words '*concerned*' or alternatively, have the word '*affected*' inserted. We do not oppose this.

Clause 13.5. Display of roster and Notice of change of roster

28. ABI and ASIAL have proposed re-inserting '*by electronic means*' to clause 13.5(b). We agree.
29. ABI and ASIAL have submitted that clause 13.5(c) of the plain language draft has omitted detail from the current award clause 21.12 regarding the payment of overtime for variations to a roster. Though our reasoning varies, we are in agreement that key parts of clause 21.12 should be retained. We refer to paragraphs 6 to 10 of our submission filed 6 October 2017 ('initial submission').

Clause 14. Breaks

30. ABI have submitted that a provision similar to clause 14.4 is not found in the current award. We disagree. Clause 14.4 retains the meaning within clause 21.6(a).
31. ASIAL have submitted that the word '*operationally*' should be retained in clause 14.3. We agree.
32. ASIAL have submitted that the wording in clause 21.3 of the current award is preferable to the wording in clause 14.5 of the plain language draft. We prefer the plain language draft wording.
33. ASIAL have submitted that the heading of Column 2 in Table 4 in clause 15.1 should be amended. We prefer the current form of the table in the plain language draft.

Clause 17. Payment of Wages

34. ABI and ASIAL have proposed amendments to clause 17.2. We note that clause 17.2 in the plain language draft is not necessarily clearer than the current award clause 19, and we would support retaining the current award clause.
35. ASIAL have objected to the wording of clause 17.3. We disagree. The wording in the plain language draft accurately reflects that employees should not have to pay any additional costs to receive wages.

Clause 19. Allowances

36. ASIAL have submitted that the supervision allowance in clause 19.5 should be expressed as a per shift allowance. We disagree. This would be a substantive change to the award, and would require proper consideration outside of the plain language re-drafting process.

Clause 19.4 Broken Shift Allowance

37. ABI have proposed an amendment to clause 19.4. We disagree. The amendment is unnecessary as the current wording in the plain language draft is clear.

Clause 21.3 Overtime rates

38. ASIAL have submitted that clause 21.3 is inconsistent overall with other clauses of the award. We disagree. We do not see any inconsistency in regards to this clause.
39. ABI and ASIAL have submitted that the wording in current clause 23.4 be re-inserted in place of clause 21.3(b) in the plain language draft. We disagree. The wording in clause 21.3(b) of the plain language draft clarifies the meaning of the clause.
40. ASIAL have submitted that the words '*minimum hourly*' in clause 21.3(a) should be deleted and the current wording be reinstated. We prefer the wording in the plain language draft.

Clause 22. Penalty rates

41. ASIAL have proposed the addition of a clause 22.2(d) stating '*the casual loading is not included when calculating the overtime rate*'. We object to this submission and will be making an additional submission regarding this matter for the consideration of the Commission within the award review process.
42. The plain language re-drafting process is not the appropriate avenue for ASIAL to pursue this additional clause.
43. ASIAL have proposed a rewording of clause 22.3 of the plain language draft. We presume the rewording relates to clause 22.2. Clause 22.1 of the plain language draft already addresses the issue raised by ASIAL. The proposed amendment is not necessary.

Clause 24.6. Payment for Annual leave

44. ABI and ASIAL have submitted that sections from clause 24.6(a) have been omitted, and ASIAL have noted clause 24.10 has been omitted. We refer to paragraphs 42 to 49 of our initial submission. The current clauses 24.6 and 24.10 should be retained.

Schedule A—Classification Definitions

45. ASIAL have submitted that the insertion of the words '*and*' and '*or*' should be removed and that current award wording should be retained. We have no objection.