



Fair Work Commission: 4 Yearly Review of Modern Awards

SUBMISSIONS

SECURITY SERVICES INDUSTRY AWARD 2017

CLEANING INDUSTRY AWARD 2017

PLAIN LANGUAGE AWARD SPECIFIC CLAUSES

(AM2016/15, AM 2014/89 AND AM2014/69)

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

1. INTRODUCTION

- 1.1 These submissions are made in accordance with the Directions issued by President Ross on 19 September 2017 with respect to matters AM2016/15, AM 2014/89 and AM2014/69; namely, the plain language Award-specific clauses of:
- (a) the *Security Industry Award 2017 (Security Award)* published on 8 September 2017; and
 - (b) the *Cleaning Industry Award 2017 (Cleaning Award)* published on 8 September 2017.
- 1.2 These submissions are filed on behalf of Australian Business Industrial (**ABI**) and the New South Wales Business Chamber Ltd (**NSWBC**).
- 1.3 ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) (**FWRO Act**). ABI has over 4,200 members.
- 1.4 NSWBC is a recognised State registered association pursuant to Schedule 2 of the FWRO Act and has some 21,000 members.
- 1.5 The same numbering as the revised plain language Exposure Drafts (**PLED**) has been used throughout these submissions, except where otherwise indicated.

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2. CLAUSE 2 - DEFINITIONS

- 2.1 The definition of '*cash-in-transit*' in the PLED differs from the meaning in the current Award. The primary difference is that movement was previously '*usually in an armoured vehicle*' but now is expressed to include movement '*in an armoured or other vehicle*'. The requirement that the transport must '*usually*' occur in an armoured vehicle is a subtle but important difference.

3. CLAUSE 4 - COVERAGE

- 3.1 The definition of '*security services industry*' at clause 4.2 has omitted some of the wording from the current clause 4.2, which our clients submit should be reinserted. Namely:
- (a) Subclause (a) should be redrafted to read '*patrolling, protecting, screening, watching or guarding any people and/or property (including cash or other valuables)*'; and
 - (b) Subclause (d) should be amended to read '*the operation of a security control room or monitoring centre*'.

3.2 The word '*minor*' has been added to clause 4.3, which is not in the current clause. Our clients submit it should be removed to ensure the precise meaning of the provision is preserved.

4. **CLAUSE 10 - PART TIME EMPLOYMENT**

4.1 The new clause 10.3 appears intended to replace the current clause 10.4(a)(iii). As has been discussed with respect to other PLEDs (including the *Clerks - Private Sector Award*), this clause is problematic, because it can be interpreted to mean that other provisions of the PLED would be applied to a part time employee in precisely the same way they are applied to a full time employee because they do not specify that they should be pro rated, and the 'pro rata' reference found in clause 10.4(a)(iii) has been omitted.

4.2 An example of this would be the payment of the 'relieving officer allowance' in accordance with clause 19.6, which provides for a weekly payment of \$34.14. Under the current Award, our clients consider this amount would be pro rated depending on the part time employee's ordinary hours of work. This may not be the case under the PLED provisions.

4.3 Clause 10.4 is also a new addition. This clause is problematic because it refers to payments which are made in accordance with the NES, and it is also unclear how the proportionality of these payments is to be determined.

4.4 For example, the NES entitlement at section 87(1) provides a part time employee with four weeks of paid annual leave for each year of service. How many hours this entitlement will work out to be will depend on the rate of accrual, which is in turn dependent on the employee's ordinary hours of work. Payment for annual leave is dealt with at section 90 of the FW Act. This requires a part time employee to be paid at their base rate of pay for their ordinary hours of work in the period. There is no requirement for any proportionality calculation to be undertaken. The same issues arise with respect to personal/carer's leave.

4.5 Clause 10.9 would be improved by the addition of a reference to the actual amount payable in accordance with clause 15, so as to read as follows:

A part time employee must be paid in accordance with Column 3 of Table 4 - Minimum Rates in clause 15 for each ordinary hour worked.

Table 4 - Minimum Rates is a defined term and is used elsewhere (see for example clause 11.2(a)). This may negate the need to include the clause reference.

5. CLAUSE 11 - CASUAL EMPLOYMENT

5.1 Our clients propose that an alteration to clause 11.2(a) in the following terms would reduce any uncertainty as to whether casual loading is cumulative or compounding:

An employer must pay a casual employee for each ordinary hour worked a loading of 25% ~~on top of~~ in addition to the minimum hourly rate otherwise applicable under Table 4 - Minimum Rates.

6. CLAUSE 12 - CLASSIFICATIONS

6.1 The provision at the current clause 10.6(b)(ii) (relating to the classification in which an employee is employed) has been omitted from clause 12.3(b). Our clients would be interested to understand why this is the case, otherwise propose that it be reinserted.

7. CLAUSE 13.3 - SHIFT DURATION

7.1 Our clients agree with the Commission's comment on clause 13.3(a)(i); that is, the provision may restrict flexibility in rostering arrangements. However, clause 21.2(a)(iii) in the current Award has the same effect, and the purpose of the plain language exercise is not to change the legal effect of the clauses. Our clients do not in principle oppose an amendment to the provision to increase flexibility.

7.2 Clause 13.3(d) has been amended to include reference to a 'union' whereas the current clause 21.2(c) merely refers to the right to be represented. Our clients support a reversion to the previous wording.

7.3 The definition of the term 'rest breaks' at clause 13.3(h) is clumsy. Our clients propose the following wording:

*However, an employee may be rostered to work ordinary hours in up to 2 periods of duty, exclusive of rest breaks (this is a **broken shift**). An employee must be paid for at least 3 hours for each period of duty on a broken shift even if the employee works for a shorter time.*

8. CLAUSE 13.5 - DISPLAY OF ROSTER AND NOTICE OF CHANGE OF ROSTER

8.1 The words 'by electronic means' have been omitted from subclause (b) and should be re-added.

8.2 The reference to the payment of overtime in circumstances where less than 7 days' notice is provided has also been omitted from subclause (c). This reference makes it clear that an employee's roster can be changed without the required period of notice or agreement, so long as the employee receives additional remuneration.

9. CLAUSE 13.6 - NOTICE OF ROSTERS

9.1 Our clients submit that defining the term 'advance notice' to mean a particular period would represent a substantive change to the Award. Currently, so long as an employer provides an employee with a roster in advance of its commencement, they are complying with the Award. If the Commission is minded to insert a definition, our clients would seek to be heard further on the matter.

10. CLAUSE 14 - BREAKS

10.1 A provision similar to Clause 14.4 is not found in the current Award. It does not follow that an employee who is unable to be provided with an unpaid meal break due to operational requirements will necessarily be able to be provided with a paid meal break. Our clients submit this clause should be removed.

11. CLAUSE 17 - PAYMENT OF WAGES

11.1 Clause 17.2 of the PLED is intended to replicate the requirement in clause 19 of the current Award, which provides that payment of wages occur no later than Thursday in the relevant week. However, our clients submit that this meaning has not been captured by the new clause and support a reversion to wording as follows: *'Payment will be made not later than Thursday in the pay week.'*

12. CLAUSE 19.4 - BROKEN SHIFT ALLOWANCE

12.1 The current drafting of this clause does not make it entirely clear that the allowance is not payable in respect of both periods of the broken shift; i.e., that only one amount of the allowance is payable per broken shift. This may be remedied by the addition of the word *'total'* before *'broken shift allowance'*.

13. CLAUSES 19.5 AND 19.6

13.1 Both of these clauses refer to weekly allowances (Supervision allowance and Relieving officer allowance respectively). In answer to the Commission's question with respect to clause 19.6, our clients understand that current practice is for these types of allowances to be divided into a daily figure for employees who do not work a full week at either a supervisor level or as a relieving officer.

14. CLAUSE 21.3 - OVERTIME RATES

14.1 Subclause (b) in the PLED appears to depart from the current clause 23.4, which prescribes that overtime which extends over two days will be paid at the rate applicable to each portion of the overtime. Our clients submit that the wording in clause 23.4 should be re-inserted.

15. CLAUSE 24.6 - PAYMENT FOR ANNUAL LEAVE

- 15.1 It would appear that the reference to payment for annual leave at the rate the employee would have received for working their normal hours (which is clause 24.6(a) of the current Award) has been omitted from the PLED.

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16. CLAUSE 9 - FULL-TIME EMPLOYMENT

- 16.1 The PLED clause is repetitive and unclear. Our clients propose the following alternative wording:

An employee who is engaged to work an average of 38 ordinary hours in accordance with an hours of work arrangement in accordance with clause 13- Ordinary hours is a full-time employee.

17. CLAUSE 10 - PART-TIME EMPLOYMENT

- 17.1 The new clause 10.4 appears to be problematic, as has been discussed with respect to other PLEDs (including the *Clerks - Private Sector Award*). This is because it can be interpreted to mean that other provisions of the PLED would be applied to a part time employee in the same way they are applied to a full time employee, due to the fact the clause bestowing the entitlement does not specify otherwise and the 'pro rata' reference previously found at clause 10(e) has been omitted.
- 17.2 For example, a part time employee would be entitled to the full amount of leading hand allowance prescribed by clause 21.7 of the PLED, rather than a pro rated amount as is currently the case.
- 17.3 Clause 10.5 is also a new addition. This clause is problematic because it refers to payments which are made in accordance with the NES, and it is also unclear how the proportionality of these payments is to be determined.
- 17.4 For example, the NES entitlement at section 87(1) provides a part time employee with four weeks of paid annual leave for each year of service. How many hours this entitlement will work out to be will depend on the rate of accrual, which is in turn dependent on the employee's ordinary hours of work. Payment for annual leave is dealt with at section 90 of the FW Act. This requires a part time employee to be paid at their base rate of pay for their ordinary hours of work in the period. There is no requirement for any proportionality calculation to be undertaken. The same issues arise with respect to personal/carer's leave.

18. CLAUSE 11 - CASUAL EMPLOYMENT

18.1 Clause 11.1 is a new addition to the clause. As has been discussed with respect to other PLEDs, our clients consider its addition to be problematic.

18.2 Our clients propose that an alteration to clause 11.3 in the following terms would reduce any uncertainty as to whether casual loading is cumulative or compounding:

An employer must pay a casual employee for each ordinary hour worked a loading of 25% ~~on top of~~ in addition to the minimum hourly rate specified in column 3 of Table 2 - Minimum rates for full-time employees.

19. CLAUSE 12 - CLASSIFICATIONS

19.1 Clause 15.2 in the current Award has been omitted from the PLED and should be re-inserted.

20. CLAUSE 13 - ORDINARY HOURS OF WORK AND ROSTERING

20.1 The concept of 'agreement' regarding the arrangement of working hours has been added to clause 13.1. The only reference to 'agreement' is found at the current clause 24.1(c)(iv), regarding the working of hours up to 10 per day. The requirement to agree should be removed from the provision.

20.2 Clause 13.5(c)(i) has omitted the requirement that a single employee be rostered at the location, which is referred to at clause 24.2 of the current Award. This reference should be re-introduced.

21. CLAUSE 14 - BREAKS

21.1 The requirement in clause 26.1 of the current Award that an employee is entitled to a 'further' paid ten minute break only if they are a 'full-time shift worker working a straight shift' has been omitted from clause 14.1(c). This wording appears intended to ensure that only employees who have qualified for a paid meal break receive a further paid tea break. The word 'further' should be re-inserted.

21.2 Generally, whilst the definitions at clause 14.1(a) and clause 14.2(a) operate to mean that the effect of the provisions is still the same, it cannot be said that the provisions are clearer than the existing clauses. Our clients respectfully propose that the Drafter re-consider whether the existing provisions can be more accurately captured by the PLED.

21.3 Should you have any questions about these submissions please contact Kate Thomson on 02 49891003.

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On behalf of Australian Business Industrial and the NSW Business Chamber Ltd