

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 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.

Clause 8. Types of employment

2. The plain language exposure draft removes the obligation on the employer to record information about an employee's type of employment in a time and wages record. The relevant clauses are set out in the table below:

Current Security Award	Security Award plain language draft
10.2 At the time of engagement, an employer will inform each employee of the terms of their engagement and in particular whether they are to be full-time, part-time or casual. Such decision will then be recorded in a time and wages record.	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. Ensuring employers have an obligation to record information regarding the employee's type of employment in a time and wages record assists in reducing underpayment and ensuring correct records are maintained.
4. Reducing these obligations may increase the likelihood of award non-compliance.
5. The current award provisions should be retained.

Clause 13. Ordinary hours of work and rostering

6. The plain language exposure draft substantially alters the provisions of the display of rosters and notice of change of rosters clause in a manner which alters the legal effect of the clause. The relevant clauses are set out in the table below:

Current Security Award	Security Award plain language draft
<p>21.12 Display of roster and notice of change of roster</p> <p>The employer must notify employees who work their ordinary hours in accordance with a roster of the commencing and ceasing times of their rostered hours of work either by posting the roster on a noticeboard which is conveniently located at or near the workplace or through electronic means. Such times, once notified, may not be changed without the payment of overtime, or by seven days' notice given in accordance with this clause. However, by agreement between the employer and the employee less than seven days' notice may be substituted.</p>	<p>13.5 Display of roster and notice of change of roster</p> <p>(a) The employer must prepare a roster showing, for each full-time or part-time employee who works on a roster, their name and the times at which they start and finish work. (b) The employer must post the roster in an obvious place that is easily accessible by the affected employees. (c) The employer and an employee may agree to change the employee's roster at any time, or the employer may change the employee's roster by giving the employee 7 days' notice of the change.</p>
<p>21.11 Notice of rosters</p> <p>Employees (other than relieving officers and casual employees) must work their ordinary hours of work in accordance with a roster for which advance notice has been given. A relieving officer or casual employee may also, at the employer's discretion, work their ordinary hours of work in accordance with a roster for which advance notice has been given.</p>	<p>13.6 Notice of rosters</p> <p><i>Parties are asked to suggest a length of time for "advance notice". Also see clause 2—Definitions for the definition of "relieving officer" which refers to "short notice".</i></p> <p>(a) Employees (other than relieving officers and casual employees) must work their ordinary hours of work in accordance with a roster of which they have been given advance notice. (b) A relieving officer or casual employee may, at the employer's discretion, work their ordinary hours of work in accordance with a roster of which they have been given advance notice. NOTE: An allowance is payable for being appointed as a relieving officer: see clause 19.6—Relieving officer allowance.</p>

7. The current award clause includes an entitlement to overtime where an employer has notified an employee of the roster and has amended it without notice. There is no equivalent entitlement in the plain language draft.
8. The current entitlement provides a measure of protection from employers changing the roster at will and better enables employees to plan ahead and around work. There is recognition in the current award that if a roster is changed without notice, an employee is entitled to overtime to compensate them for potential inconvenience or difficulties caused.
9. The removal of this entitlement is a substantive change to the Security Award and reduces the protective power of the Security Award.
10. The wording in the current clause which states '*Such times, once notified, may not be changed without the payment of overtime, or by seven days' notice given in accordance with this clause*' should be retained.
11. The Fair Work Commission has requested that the parties suggest a length of time for 'advance notice' under clause 13.6 of the plain language draft.
12. The length of time for advance notice should be a minimum of 14 days.
13. Providing employees with 14 days' notice at a minimum enables employees some measure of certainty in organising work commitments alongside other commitments, such as child care and family arrangements.

Clause 14. Breaks

14. The insertion of '*Example 1. Breaks after overtime (full-time employee)*' contained in the plain language draft may cause confusion.
15. Clause 14.5(c) of the plain language draft states that '*Subject to paragraph 14.5(d), the employee must be released after completing the overtime until the employee has had a break of 8 consecutive hours without suffering any loss of pay for ordinary hours not worked during that break.*'
16. Under the second part of the example titled '*Calculating pay for a break of 8 or more hours*' George is directed to start one hour later than his usual time so he can have an 8 hour break. In accordance with clause 14.5(c), George should not suffer any loss of pay for ordinary hours not worked during the break and he should be paid for his full shift even though he started

one hour later i.e. George should be paid for the full 7.6 hours even though he does not work the full 7.6 hours. The example does not clearly identify this. Rather, it simply states that George ‘works 7.6 hours on the Wednesday’, which could be read to imply that he worked an extra hour later on Wednesday.

17. The example is unclear and should be amended.

Clause 15. Minimum Rates

18. 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 Security Award	Security Award plain language draft
14.1 An employer must pay full-time employees minimum weekly wages for ordinary hours (exclusive of penalties and allowances) as follows:	15.1 An employer must pay an employee the minimum hourly rate specified in column 3 (or for a full-time employee the minimum weekly rate specified in column 2) in accordance with the employee classification specified in column 1 of Table 4— Minimum rates.

19. The current clause clearly identifies that minimum weekly wages are exclusive of penalties and allowances. The plain language draft no longer states this.
20. United Voice has concerns that within the security industry there are significant levels of non-payment of penalties and allowances. 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.
21. Clause 15.1 should be amended as follows: *‘An employer must pay an employee the minimum hourly rate (exclusive of penalties and allowances) specified in column 3 (or for a full-time employee the minimum weekly rate specified in column 2) in accordance with the employee classification specified in column 1 of Table 4— Minimum rates.’*

Clause 15. Minimum rates –Relieving Officer Allowance

22. The plain language draft has amended the manner by which a relieving officer may be appointed. The relevant clauses are set out in the table below:

Current Security Award	Security Award plain language draft
<p>15.8 Relieving officer allowance</p> <p>A relieving officer allowance is payable to an employee who is, by agreement with the employer, appointed as a relieving officer. A relieving officer is engaged for the purpose of relieving at short notice another Security Officer and for whom a display of roster is not required. 24 hours’ notice of shift will be given where possible.</p>	<p>19.6 Relieving officer allowance</p> <p><i>Parties are asked to provide submissions on how a weekly allowance works in practice. The allowance is payable for an appointment at short notice.</i></p> <p>(a) The employer must pay the employee who is appointed as a relieving officer an allowance of \$34.14 per week. (b) While it is not necessary for a relieving shift to be shown on a roster, an employer must, if possible, give a relieving officer at least 24 hours’ notice of a relieving shift.</p>

23. Under the current award clause 15.8 an employee can be appointed as a relieving officer ‘*by agreement with the employer*’. The agreement of the employee is required if the employer wishes to appoint them as the relieving officer.
24. In clause 19.6 of the plain language draft there is no requirement that agreement be obtained. This means that an employee could be appointed as the relieving officer without their agreement.
25. This is a substantive change to the provision which disadvantages employees.
26. The current award clause should be retained.
27. Further, the Fair Work Commission has requested that the parties provide submissions on how a weekly Reliving Officer allowance works in practice.
28. United Voice notes the following:
- (a) That a worker appointed to the Relieving Officer role receives the allowance from the time of appointment until such time as they transfer to a stationary position.

(b) The Relieving Officer allowance is paid on a weekly basis regardless of how many shifts are worked that week. As an example, an employee is appointed by agreement as the Relieving Officer for a period of 2 weeks. In week 1, the employee works 5 shifts. In week 2, the employee works 3 shifts. The employee is paid the full amount of the Relieving Officer allowance each week.

Clause 19. Allowances

29. 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 Security Award	Security Award plain language draft
<p>15.1 Allowance rates</p> <p>Employers must pay to an employee such allowances as the employee is entitled to under this clause at the following rates (which are expressed as a percentage of the standard rate being the minimum weekly wage for the Security Officer Level 3 classification):</p>	<p>19.1 Clause 19 gives employees an entitlement to monetary allowances of specified kinds in specified circumstances.</p>

30. The phrasing in the current clause 15, which states that ‘*employers must pay to an employee such allowances*’, is more direct and simple to understand than the words in the plain language clause 19.1, which states that ‘*clause 19 gives employees an entitlement to monetary allowances*’.

31. Stating that ‘*employers must pay to an employee such allowances*’ clearly identifies that there is an obligation on the employer to pay.

32. The current wording in clause 15 of the Security Award should be retained.

Clause 19.8 Meal Allowance

33. 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 Security Award	Security Award plain language draft
<p>15.3 Meal allowance</p> <p>A meal allowance is payable to an employee who is required to work more than one hour beyond the completion of the employee’s ordinary shift unless the employee was notified the previous day of the requirement to work additional time.</p>	<p>19.8 Meal allowance</p> <p>(a) Clause 19.8 applies to an employee who:</p> <p>(i) is required to work overtime of more than one hour after the completion of their ordinary shift; and (ii) was not advised of that requirement on or before the previous day.</p> <p>(b) The employer must pay the employee a meal allowance of \$16.16.</p>

34. Under the current award, the entitlement to a meal allowances arises when an employee is required to work *‘more than one hour’* without being notified before the previous day.
35. Under the proposed plain language draft, the entitlement arises when an employee is required to work *overtime* of more than one hour without being notified before the previous day.
36. 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 an additional hour 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.
37. Clause 19.8(a) should be amended as follows:
- 19.8 Meal allowance*
- (a) Clause 19.8 applies to an employee who: (i) is required to work more than one hour after the completion of their ordinary shift; and (ii) was not advised of that requirement on or before the previous day.*

Clause 23. Annual leave (shift workers)

38. 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 Security Award. The relevant clauses are set out in the table below:

Current Security Award	Security Award plain language draft
<p>24.2 Definition of shiftworker</p> <p>For the purpose of the NES, a shiftworker is an employee: (a) 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</p> <p>(b) who is regularly rostered to work on Sundays and public holidays.</p>	<p>23.2 Additional paid annual leave for certain shiftworkers</p> <p>(a) Clause 23.2 applies to an employee who is employed as 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. (b) The employee is a shiftworker for the purposes of the NES (entitlement to an additional week of paid annual leave).</p>

39. There is no requirement under the current award that a business must operate 24 hours a day for 7 days a week in order for an employee to be defined as a shift worker.
40. The added requirement within clause 23.2(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 Security Award.
41. The current definition of shift worker in clause 24.2(a) of the Security Award should be retained.

Clause 23. Annual Leave (payment)

42. The plain language draft substantially alters the clause in a manner that reduces employee entitlements. The relevant clauses are set out in the table below:

Current Security Award	Security Award plain language draft
<p>24.6 Payment for annual leave</p> <p>Before the start of the employee’s annual leave the employer must pay the employee in respect of the period of such leave the greater of: (a) the amount the employee would have earned during the period of leave for working their normal hours, exclusive of overtime, had they not been on leave; and (b) the employee’s ordinary time rate specified in</p>	<p>23.3 Payment for annual leave</p> <p>(a) An employer must pay an employee a loading of 17.5% on the amount payable to the employee under the NES (including any applicable first aid allowance, supervision allowance or relieving officer allowance payable in accordance with clause 19— Allowances) for a period of paid annual leave, including a period of untaken paid</p>

<p>clause 14.1, together with, where applicable, the leading hand allowance, relieving officer's allowance and first aid allowance prescribed in clause 15.1(a) respectively, plus a loading of 17.5%.</p> <p>24.10 Payment of accrued annual leave on termination</p> <p>Where an employee is entitled to a payment on termination of employment as provided in s.90(2) of the Act, the employer must also pay to the employee an amount calculated in accordance with clause 24.6(a). The employer must also pay to the employee a loading of 17.5% in accordance with clause 24.6(b) unless the employee has been dismissed for misconduct.</p>	<p>annual leave when the employment of the employee ends.</p> <p>(b) An employee paid by electronic funds transfer may be paid in accordance with their usual pay period while on paid annual leave.</p>
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43. The current award clause 24.6 provides for the employee to receive the “greater” of two options for payment during annual leave.
44. The plain language draft clause 23.3 removes this entitlement and only makes provision for the employee to receive a loading of 17.5%.
45. This amendment would substantially reduce the annual leave payment of some employees.
46. Further, the current award in clause 24.6 makes provision that employees who are paid by means other than electronic transfer should be paid *‘Before the start of the employee’s annual leave’*. There is no provision in the plain language draft for when employees who are paid by means other than electronic transfer will be paid.
47. The current award clause 24.10, which states employee entitlements to payment of accrued annual leave on termination, has not been reproduced in the plain language draft. In clause 23.3(a) of the plain language draft employees are only entitled to receive a loading of 17.5%

on accrued annual leave entitlements on termination. This is significantly less than what employees are entitled to under the current award.

48. The removal of this clause would significantly reduce the annual leave payment of employees on termination.

49. The current clauses 24.6 and 24.10 should be retained.

Clause 23. Annual Leave (temporary close-down)

50. 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 Security Award	Security Award plain language draft
24.9 Annual close down (c) 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.	23.4 Temporary close-down (e) In determining how many days' leave an employee must take to cover a temporary close down period, any day during that period that is a public holiday is to be disregarded. NOTE: Public holiday entitlements are provided for in the NES.

51. The current clause in the Security Award, clause 24.9(c), 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.

52. 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.

53. If the entitlement in clause 24.9(c) is removed from the Security 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.

54. The current clause 24.9(c) should be retained.