



STATEMENT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Plain language re-drafting – *Cleaning Services Award 2010*

(AM2016/15, AM2014/69)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 29 JUNE 2018

4 yearly review of modern awards – plain language re-drafting – Cleaning Services Award 2010.

Background

[1] This Statement concerns the plain language re-drafting of the *Cleaning Services Award 2010*.

[2] A revised summary of submissions¹ was published on the Commission's website on 25 January 2018, along with a revised plain language exposure draft² for the *Cleaning Services Award 2010* (the revised PLED) incorporating amendments arising from the November 2017 conference and parties' submissions.

[3] A Statement³ issued on 21 February 2018 (the February 2018 statement) set out the updated status of the items in the revised summary of submissions. An agenda for the next conference was attached to the February 2018 statement.

[4] A summary of agenda items was published on 28 February 2018. A revised agenda and summary of agenda items was published on the Commission's website on 19 June 2018.

[5] A conference was held on 22 June 2018 (the June 2018 conference) to address the outstanding issues. A transcript of the conference is available on the 4 yearly review of modern awards [webpage](#). The conference was attended by representatives of:

- Australian Industry Group (Ai Group);
- Australian Business Industrial and New South Wales Business Chamber (ABI);
- Business SA (BSA); and
- United Voice (UV).

¹ [Revised summary of submissions](#), 25 January 2018

² [Revised plain language exposure draft](#), 25 January 2018

³ [2018 FWC 1117](#)

[6] This statement sets out the outcome of the June 2018 conference and the next steps in finalising the plain language re-drafting of the *Cleaning Services Award 2010*.

Confirmation of provisionally resolved items

[7] The revised agenda identified a number of provisionally resolved items which were incorporated into the revised PLED. The proposed amendments were set out at Attachment A to the agenda.

[8] During the June 2018 conference, the parties indicated that the following items were resolved:

- Clause 6 – individual flexibility arrangements (item 1);
- Clause 10 – part-time employment (items 4, 6, 6A, 7, 7A and 7B);
- Clause 11 – casual employment amendment (items 8 and 9);
- Clause 13 – ordinary hours of work and rostering (item 14);
- Clause 14 – breaks (item 16);
- Clause 18 – payment of wages (items 22 and 23);
- Clause 21 – allowances (items 25 in part, 26, 27 and 28A);
- Clause 23 – overtime (item 30);
- Clause 32 – consultation about change of contract (item 38);
- Clause 34 – dispute resolution procedure training (item 41); and
- Clause 39 – exclusion from obligation to pay redundancy pay (item 42).

[9] In relation to Item 2 it is *proposed* that clause 8.2 of the PLED be amended, as follows:

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, their usual work location and classification.

8.3 Each employee’s classification and whether they are engaged as a full-time, part-time or casual employee will be recorded in the time and wages record.’

[10] Item 10 relates to clause 12 (classifications). Item 10 was dealt with item 20. Item 10 is resolved on the basis of deletion of clause 15 (see item 20, paragraphs [35] and [36]).⁴

⁴ Transcript, 22 June 2018, 210 – 235

[11] Discussion also took place in relation to Item 21 during the June 2018 conference. It is *proposed* that clause 16.1 of the PLED be amended to read:

‘16.1 An employer must pay an employee the rate applicable to the employee’s classification specified in column 1 of **Table 2 – Minimum rates** for ordinary hours of work.

Table 2—Minimum rates

Column 1 Cleaning Services Employee classification	Column 2 Minimum weekly rate	Column 3 Minimum hourly rate
Level 1	\$742.10	\$19.53
Level 2	\$767.80	\$20.21
Level 3	\$809.10	\$21.29

NOTE 1: Adult employee is defined in clause 2—Definitions.

NOTE 2: Provisions for calculating rates for a junior employee of a shopping trolley collection contractor are at clause 16.2—Junior rates (employees of shopping trolley collection contractors).

NOTE 3: Provisions for calculating rates for part-time employees are at clause 10.2 (Part-time employment) and are based on the minimum hourly rate specified in column 3.

NOTE 4: Provisions for calculating rates for casual employees are at clause 11.3 (Casual employment) and are based on the minimum hourly rate specified in column 3.

NOTE 5: Schedule B—Summary of Hourly Rates of Pay sets out the hourly rates of pay including overtime rates and penalty rates.’

Attachment A: Proposed changes

[12] Attachment A to the revised agenda set out a number of proposals for the resolution of the items noted at 1.b) that had not yet been incorporated into the revised PLED.

Items 18 and 19: Clause 14.4

[13] It was *proposed* that the word ‘rostered’ be deleted from paragraph 14.3(a). It was also *proposed* that paragraph 14.4(c) be deleted and replaced by:

‘The employee must not suffer any loss of pay for ordinary working time during the period of a release from duty mentioned in paragraph (b).’

[14] Any party opposing these proposed variations is to inform the Commission of their view by **4pm, Friday 6 July 2018**.

Item 28: Clause 21.10

[15] The proposed amendment resolves this issue.

Item 31: Clause 23.5

[16] It was agreed that paragraph 23.5(a) be amended to insert the following words after the word ‘employee’:

‘following the completion of their ordinary hours’.

Items 33 and 34: Clause 25.2

[17] It was agreed that proposed paragraph 25.2(c) be deleted, on the basis of an inconsistency with the NES.

Item 35: Clause 25.3(c)

[18] It was agreed that United Voice and Ai Group would have further discussions in respect of this issue and provide a joint report on the outcome of those discussions by **4pm, Friday 13 July 2018**. Any submissions in reply are to be filed by **4pm, Friday 27 July 2018**.

Outstanding items

Item 3

[19] Item 3 relates to clause 9 (full-time employment). A background paper setting out the issues in relation to clause 9 will be published on **3 August 2018**.

Item 5

[20] Item 5 relates to clause 10 (part-time employment).

[21] It is agreed that clause 10.2 of the PLED be replaced with the following:

‘**10.2** An employer must pay a part-time employee for each ordinary hour worked an allowance of 15% in addition to the minimum hourly rate specified in column 3 of Table 2—Minimum rates for full-time and part-time employees.

NOTE: The part-time allowance 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 payment of overtime.’

[22] This item is now resolved.

Items 8 and 9

[23] Items 8 and 9 relate to clause 11 (casual employment).

[24] It is agreed that clause 11.3 of the PLED be replaced with the following:

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

[25] These items are now resolved.

Item 12

[26] Item 12 relates to clause 12 (classifications) of the revised PLED. Ai Group's concern with the re-drafted clause is that it requires that an employer classify all employees in accordance with the definitions in Schedule A and that this is not a requirement of the current award.⁵ Ai Group sought an opportunity to put further submissions in support of its position.⁶

[27] Ai Group is to file further written submissions in respect of this issue by **4pm, Friday 13 July 2018**. Any submissions in reply are to be filed by **4pm, Friday 27 July 2018**. The matter will then be determined on the papers.

Item 13

[28] Item 13 relates to clause 13.1(a) (ordinary hours of work):

‘The employer and a full-time employee must agree on the arrangement for the working of an average of 38 ordinary hours per week.’

[29] ABI submit that the concept of agreement regarding the arrangement of working hours has been added to clause 13.1. ABI note the only reference to ‘agreement’ is found at the current clause 24.1(c)(iv), regarding working up to 10 hours per day. ABI submit the requirement to agree should be removed from the provision.⁷

[30] Ai Group also submit that the re-drafted clause requires that a full-time employee work under an agreed hours of work arrangement in all circumstances, that this is not a requirement of the current award and it is not appropriate.⁸ Ai Group submit the current award gives the employer the right to set the hours of work within defined boundaries, with additional flexibility available by agreement.⁹

[31] Business SA submit that the agreed hours of work arrangements in the re-drafted clause are not in the current award provision.¹⁰

[32] United Voice disagree with the submissions of Ai Group, ABI and Business SA and support the redrafted clause. United Voice submit that the wording of clause 13.1(a) reflects the existing entitlements in clauses 24.1(e) and (f) of the current award.¹¹ United Voice submit that under the current award, the arrangement of ordinary hours of work is not a unilateral decision of the employer.¹²

⁵ [Ai Group submission](#), 12 October 2017, paragraphs 8.

⁶ [Transcript 22 June 2018](#), paragraphs [165] – [180].

⁷ [ABI submission](#), 12 October 2017, paragraph 20.1.

⁸ [Ai Group submission](#), 12 October 2017, paragraphs 9.

⁹ [Ai Group submission](#), 12 October 2017, paragraphs 9.

¹⁰ [Business SA submission](#), 13 October 2017, paragraph 6.

¹¹ [United Voice reply submission](#), 20 October 2017, paragraphs 17 – 19.

¹² [United Voice reply submission](#), 20 October 2017, paragraph 5.

[33] The parties are invited to consider the *proposal* that clauses 13.1 – 13.4 be amended to read:

‘13.1 Ordinary hours of work and roster cycles – full-time employees

- (a) Ordinary hours may be worked on any day of the week.
- (b) Full-time employees work an average of 38 ordinary hours per week in one of the following ways:
 - (i) working 5 days of 7.6 hours each per week; or
 - (ii) working 152 hours per 4 week cycle in workplaces at which employees work on a rostered day off basis in accordance with clause 13.2; or
 - (iii) working 19 days of 8 hours each per month; or
 - (iv) working up to 10 hours on any day or days by agreement between the employer and the majority of employees concerned (therefore enabling a weekday to be taken off more frequently than would otherwise apply).

13.2 An employee who works on a rostered day off basis over a 4 week cycle is entitled to up to 12 rostered days off over each 12 month period.

13.3 Except in an emergency and subject to clause 30.1 consultation about changes to rosters or hours of work, an arrangement agreed under clause 13.2(b) may only be changed on giving a minimum of one week’s notice.

13.4 An arrangement agreed under clause 13.1(a) and in operation cannot be changed within the course of a cycle.’

[34] Any comments on the above proposal are to be filed by **4pm, Friday 13 July 2018**.

Item 20

[35] Item 20 relates to clause 15 (work organisation).

[36] The parties agreed to the deletion of clause 15 of the PLED and on that basis item 20 is now resolved.

Item 32

[37] Item 32 relates to clause 23.6(c) (call back for non-cleaning purposes) of the revised PLED. Ai Group contends that the redrafted clause contains an ambiguity in respect of the rate of pay an employee is entitled to if they are called back to work for non-cleaning purposes and proposes amendments to the clause as follows:¹³

¹³ [Ai Group submission](#), 12 October 2017, paragraphs 22.

- (c) The employer must pay the employee at the rate of pay ~~otherwise applicable (including overtime and penalty rates)~~ and for the minimum number of hours specified in paragraph 23.6(d):
- (d) The rate of pay and minimum number of hours is:
- (i) 2 hours at the ordinary hourly rate plus any applicable shift penalty, if attendance is required on a Monday to Friday; and
 - (ii) 3 hours at the appropriate Saturday rate, if attendance is required on a Saturday; and
 - (iii) 4 hours at the appropriate Sunday rate, if attendance is required on a Sunday.’

[38] The comparative provision in the current award is at clause 24.6(a)(i); clause 28.8 is a more general call back provision.

[39] United Voice disagrees with the amendment proposed by the Ai Group and submits that the amendment proposed seeks to remove an employee’s entitlement to overtime and that the wording in the revised PLED more accurately reflects the existing entitlements.¹⁴

[40] Ai Group is to file a submission in support of its proposed amendment by no later than **4pm, Friday 13 July 2018**. Any submissions in reply are to be filed by no later than **4pm, Friday 27 July 2018**. The matter will then be determined on the papers.

Next Steps

[41] The next steps in the plain language re-drafting of the *Cleaning Services Award 2010* are as follows:

1. Any party opposed to the *proposed* variations to paragraphs 14.3(a) and 14.4(c) is to inform the Commission of their view by **4pm Friday, 6 July 2018** (see [13] – [14]).
2. United Voice and Ai Group are to have further discussions about Item 35 (paragraph 25.3(c)) and provide a joint report on the outcome of those discussions by **4pm Friday, 13 July 2018**. Any submissions in reply are to be filed by **4pm, Friday 27 July 2018** (see [18]).
3. Ai Group is to file further submissions in respect of Item 12 by **4pm Friday, 13 July 2018**. Any submissions in reply are to be filed by **4pm, Friday 27 July 2018**. The matter will be determined on the papers (see [26] – [27]).
4. Parties are invited to comment on the *proposed* variation to clause 13.1 by **4pm Friday, 27 July 2018** (see [28] – [34]).

¹⁴ [United Voice reply submission](#), 20 October 2017, paragraph 31.

5. On 3 August 2018 the Commission will publish:
- (i) A background paper setting out the parties' respective positions in respect of clause 9—Full-time employment (item 3);
 - (ii) An updated PLED, reflecting the outcome of the June 2018 conference; and
 - (iii) A list of the outstanding issues.

[42] Parties are invited to review the amended PLED and the list of outstanding issues and to advise the Commission as to whether there are any *further* issues that require determination, by **4pm Friday, 17 August 2018**.

[43] A further conference will take place on **Thursday, 27 September 2018 at 9:30am in Sydney**. A notice of listing will be issued in due course.

PRESIDENT

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