



A•S•U
Australian Services Union

Fair Work Commission

4 Yearly Award Review

Australian Services Union Submission, Groups 3 & 4

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Outline of submissions regarding Groups 3 & 4

1. On the 11th December 2014, Justice Ross of the Fair Work Commission published a Statement in 2014 FWC 8985 regarding the 4 yearly review of modern awards and award stages 3 & 4. Justice Ross requested parties to identify the nature of any changes they intend to propose for the review of these awards.
2. The ASU makes the following submissions regarding the :
 - a. Social, Community, Home Care and Disability Services Award 2010
 - b. Clerks – Private Sector Award 2010
 - c. Local Government Industry Award 2010
 - d. Contract Call Centres Award 2010
 - e. Legal Services Award 2010, and
 - f. Labour Market Assistance Industry Award 2010

Social, Community, Home Care and Disability Services Award 2010

3. The ASU proposes the following changes:
4. Deletion of clause 4.2(d) as this clause has resulted in the unintended consequence of employers classifying some employee working in the social and community services sector under the *Health Professionals and Support Services Award 2010*.
5. Supplementation of NES redundancy entitlements, including for employees who were eligible to receive redundancy entitlements pursuant to clauses 12.5, 12.6 and 12.7.
6. Payment of an allowance and/or penalty rate to employees who work broken shifts in accordance with clause 25.6.
7. An increase in the remuneration payable to employees who work sleepovers in accordance with clause 25.7 and excursions in accordance with clause 25.9 and improvements to the conditions under which sleepovers and excursions are carried out.
8. Improvements to the Classification Definitions for Schedule B—Social and Community Services Employees and Schedule C —Crisis Accommodation Employees which ensure that employees are correctly classified and properly remunerated in respect of the work that they perform. In this regard, I note that paragraph 60 of *the 4 yearly review of modern awards: Guide to Award Stage* document issued by the Commission on 16 June 2014 states:
“Where it is practicable, classifications should be presented in a way that makes it easy to identify the differences between the levels or grades.”

It is currently not easy to identify the differences between the levels or grades in the Classification Definitions for Schedules B and C, especially as these definitions:

- are extremely generic;
- duplicate characteristics and responsibilities across levels;

- do not, in most cases, specifically describe the type of work carried out in the social and community services and crisis assistance and supported housing sectors.
9. Payment of an allowance to employees who use community language skills during the course of their employment.
 10. Clause 31.3 provides for annual leave loading but is silent on payment of leave loading on termination. This can be remedied by inserting a new paragraph Clause 31.3(c) as follows:
 “Where an employee’s employment has been terminated annual leave loading is payable on any untaken period of paid leave”.

Clerks – Private Sector Award 2010

11. The ASU proposes the following changes:
12. Delete clause 29.2 definition of Shiftworkers and replace with the following:
 Clause 29.2 Shiftworkers for the purposes of the NES
 - (a) For the purpose of s.87(1) of the Act, 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.
 - (b) Where an employee with 12 months’ continuous service is engaged for part of the 12 monthly period as a shiftworker, that employee must have their annual leave increased by half a day for each month the employee is continuously engaged as a shiftworker.
13. By inserting a new Clause 30.2 under Personal/Carer’s Leave and Compassionate Leave as follows:
 Clause 30.2 Evidence supporting claim
 - (a) When taking leave for personal illness or injury, the employee must, if required by the employer, establish by production of a medical certificate or statutory declaration, that the employee was unable to work because of injury or personal illness.
 - (b) When taking leave to care for members of their immediate family or household who are sick and require care and support, the employee must, if required by the employer, establish by production of a medical certificate or statutory declaration.
14. Change the numbering of the current Clause 30.2 to Clause 30.3.
15. Clause 29 provides for annual leave loading but is silent on payment of leave loading on termination. This can be remedied by inserting a new paragraph Clause 29.3(b)(iii) as follows:

“Where an employee’s employment has been terminated annual leave loading is payable on any untaken period of paid leave”.

16. By deleting Clause 17 and inserting the following:

17. Annualised Salaries

(a) For the purposes of the NES, the base rate of pay of an employee receiving an annual salary under this clause comprises the portion of annual salary equivalent to the relevant rate of pay in clause 16 and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.

(b) Annual salary instead of award provisions

Notwithstanding any other provision of this award, an employer and an employee may agree that the employer may pay the employee an annual salary in satisfaction of any or all of the following provisions of the award:

(i) Minimum Wages – clause 16;

(ii) Allowances – clause 19;

(iii) Higher duties – clause 19.7;

(iv) Overtime rates – clause 27;

(v) Penalty rates - clause 27A;

(vi) Annual leave loading – clause 29.3

(c) Annual salary not to disadvantage employees

(i) The annual salary must be no less than the amount the employee would have received under this Award for the work performed over the year for which the salary is paid (or if the employment ceases earlier over such lesser period as has been worked).

(ii) The annual salary of the employee must be reviewed by the employer at least annually to ensure that the compensation is appropriate having regard to the award provisions which are satisfied by the payment of the annual salary.

(d) An annual salary agreement must:

(i) be in writing and signed by both parties;

(ii) state the date on which the arrangement commences;

(iii) be provided to the employee;

(iv) contain a provision that the employee will receive no less under the arrangement than the employee would have been entitled to if all award

obligations had been met, taking account of the value of the provision of matters not comprehended by the award such as private use of an employer provided motor vehicle;

- (v) be subject to an annual review;
 - (vi) contain details of any salary package arrangements, including the annual salary that is payable;
 - (vii) contain details of any other non-salary benefits provided to the employee such as an employer provided motor vehicle;
 - (viii) contain details of any performance pay arrangements and performance measurement indicators;
 - (ix) contain the salary for the purposes of accident make up pay; and
 - (x) contain the award level classification for the role.
- (e) An annual salary agreement may be terminated:
- (i) by the employer or the employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (ii) at any time, by written agreement between the employer and the employee.
- (f) On termination of an annual salary agreement, the employee will revert to the Award entitlements unless a new annual salary agreement is reached."

Local Government Industry Award 2010

17. The ASU proposes the following changes:
18. Insert a new clause 9A Dispute Resolution Training as follows:

"9A Dispute Resolution Training

9A.1 A workplace representative shall be entitled to, and the employer shall grant, up to five days' leave each year, non-cumulative, to attend courses conducted by an accredited training provider on the following conditions:

- 9A.1(a) the scope, content and level of the courses are directed to the enhancement of the operation of the settlement of dispute/dispute resolution procedure;
- 9A.1(b) reasonable notice (30 days) is given by the workplace representative or shorter notice if agreed between the employer and workplace representative;

9A.1(c) the taking of leave is arranged having regard to the operational requirements of the employer;

9A.1(d) the workplace representative taking such leave shall be paid all ordinary time earnings which normally become due and payable during the period of leave. For the purposes of this clause ordinary time earnings are defined as the relevant minimum wage and shiftwork loadings, where relevant, plus over award payment where applicable.

9A.1(e) leave of absence granted pursuant to this clause shall count as service for all purposes of this award; and

9A.1(f) The employee must provide the employer with proof of attendance.

9A.2 Nothing in this clause will prevent the employee representative and the employer from reaching agreement that such training can be provided by a union or other accredited training provider/s.”

19. Delete clause 21.2(b)(vii).

20. Delete clause 21.2(b)(ix).

21. Insert new subclause 21.2(d) as follows:

22. Delete subclause 21.3 and insert in its place the following:

“21.2(d) The span of hours for the following roles/work areas will be as follows:

(i) Libraries and Library Officers – Monday to noon Saturday.

“21.3 **Span of ordinary hours**

21.3(a) The span of ordinary hours of work on a day on which ordinary hours can be worked will be between 6.00 am and 5.00 pm, except for employees engaged in the following roles/work areas:

(i) childcare services—the span of hours will be 6.00 am to 7.00 pm;

(ii) libraries – the span of hours will be 8.00 am to 8.00 pm

(iii) Environmental Health Officers will be 7.00 am to 6.00 pm.

(iv) Garbage, sanitary and sullage services will be between midnight – 5.00 pm.

- (v) caretakers, catering, cleaners, community services, hall keepers, hospitality, livestock and saleyards, local law enforcement and community safety services, parking station attendants, and tourism services—the span of hours will be 5.00 am to 10.00 pm.”

23. Delete clause 21.5 and insert new clause 21.5 as follows:

“21.5 **Maximum ordinary hours in a day**

21.5(a) An employee may work up to a maximum of 8 ordinary hours on any day/shift (excluding unpaid meal breaks) or, by agreement between the employer and employee, up to a maximum of 10 ordinary hours on any day/shift, except for employees engaged in the following roles/work areas:

- (i) Law Enforcement and Airport Officers – the maximum hours in one day will be 10 hours.”
- (ii) Recreation Clerical Officers – the maximum hours in one day will be 10 hours.”

24. Delete clause 23.3 and insert in its place the following:

“23.3 **Special loadings**

23.3(a) Special loading on ordinary hours will apply to roles/work areas as follows but will not be paid in addition to penalty or overtime rates:

- (i) Library Officers will receive a 10% loading on all ordinary hours.
- (ii) Law Enforcement and Airport Officers will receive:
 - 25% loading for each hour on Saturday;
 - 50% loading for each hour on Sunday; and
 - 15% loading for all hours when the Officer has worked more than 5 consecutive days.
- (iii) Caretakers and Caravan Park Managers will receive:
 - 25% loading for each hour on Saturday;
 - 50% loading for each hour on Sunday; and
 - 25% loading on all hours after midnight and before 5am on Monday – Friday.
- (iv) Recreation Clerical Officers will receive:

- 25% loading for each hour on Saturday;
- 50% loading for each hour on Sunday.”

25. Delete subclause 24.2(b) and insert in its place the following:

“24.2(b) Overtime worked *from 12 noon on a Saturday and all day on Sunday* will be paid at the rate of double time.”

26. Delete subclause 24.3(b) and insert in its place the following:

“24.3(b) Overtime taken as time off during ordinary hours must be taken *as time off equal to the amount of overtime worked multiplied by the appropriate overtime rate.*”

27. Delete subclause 24.6(b) and insert in its place the following:

“24.6(b) *Where the employee is on call, the employee will be paid ordinary hourly rates for each hour the employee is required to hold themselves in readiness for work.*”

28. Insert new clause 25.1A as follows:

“25.1A(a) *In addition to the NES, a Town or Shire Engineer or Environmental Health Officer shall be allowed one week’s leave (as compensation for other circumstances of employment) after a period of twelve months’ continuous service with that Local Authority. Where such an employee is engaged for part of a qualifying twelve monthly period, the employee shall be entitled to leave as accrued progressively during the qualifying period.*”

25.1A(b) *In addition to the NES, an Officer, other than a Town or Shire Engineer or Environmental Health Officer, employed by a Local Government whose head office is situated north of the 26th parallel of latitude shall be allowed one week’s leave with payment of ordinary salary after a period of twelve month’s continuous service with that Local Government. Where such an Officer is engaged for part of a qualifying twelve monthly period, the employee shall be entitled to leave as accrued progressively during the qualifying period.*”

Contract Call Centres Award 2010

29. The ASU proposes the following changes:

30. By deleting Clause 18.5 and inserting the following:

18.5. Annualised Salaries

(a) For the purposes of the NES, the base rate of pay of an employee receiving an annual salary under this clause comprises the portion of annual salary equivalent to the relevant rate of pay in clause 18 and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.

(b) Annual Salary instead of award provisions

Notwithstanding any other provision of this award, an employer and an employee may agree that the employer may pay the employee an annual salary in satisfaction of any or all of the following provisions of the award:

- (i) Minimum Wages – clause 18;
- (ii) Allowances – clause 20;
- (iii) Higher duties – clause 18.4;
- (iv) Penalty rates – clause 24;
- (v) Overtime – clause 26; and
- (vi) Annual leave loading – clause 27.4

(c) Annual salary not to disadvantage employees

- (i) The annual salary must be no less than the amount the employee would have received under this Award for the work performed over the year for which the salary is paid (or if the employment ceases earlier over such lesser period as has been worked).
- (ii) The annual salary of the employee must be reviewed by the employer at least annually to ensure that the compensation is appropriate having regard to the award provisions which are satisfied by the payment of the annual salary.

(d) An annual salary agreement must:

- (i) be in writing and signed by both parties;
- (ii) state the date on which the arrangement commences;
- (iii) be provided to the employee;
- (iv) contain a provision that the employee will receive no less under the arrangement than the employee would have been entitled to if all award obligations had been met, taking account of the value of the provision of matters not comprehended by the award such as private use of an employer provided motor vehicle;
- (v) be subject to an annual review;
- (vi) contain details of any salary package arrangements, including the annual salary that is payable;

- (vii) contain details of any other non-salary benefits provided to the employee such as an employer provided motor vehicle;
 - (viii) contain details of any performance pay arrangements and performance measurement indicators;
 - (ix) contain the salary for the purposes of accident make up pay; and
 - (x) contain the award level classification for the role.
- (e) An annual salary agreement may be terminated:
- (i) by the employer or the employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (ii) at any time, by written agreement between the employer and the employee.
- (f) On termination of an annual salary agreement, the employee will revert to the Award entitlements unless a new annual salary agreement is reached.”

Legal Services Award

31. The ASU proposes the following changes:

32. By deleting Clause 30 and inserting the following:

30. Annualised Salaries

- (a) For the purposes of the NES, the base rate of pay of an employee receiving an annual salary under this clause comprises the portion of annual salary equivalent to the relevant rate of pay in clause 14 and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.
- (b) Annual salary instead of award provisions

Notwithstanding any other provision of this award, an employer and an employee may agree that the employer may pay the employee an annual salary in satisfaction of any or all of the following provisions of the award:

- (i) Minimum Wages – clause 14;
 - (ii) Allowances – clause 19;
 - (iii) Higher duties – clause 16;
 - (iv) Overtime – clause 34;
 - (v) Penalty Rates – clause 34A
 - (vi) Annual leave loading – clause 35.3
- (c) Annual salary not to disadvantage employees

- (i) The annual salary must be no less than the amount the employee would have received under this Award for the work performed over the year for which the salary is paid (or if the employment ceases earlier over such lesser period as has been worked).
 - (ii) The annual salary of the employee must be reviewed by the employer at least annually to ensure that the compensation is appropriate having regard to the award provisions which are satisfied by the payment of the annual salary.
- (d) An annual salary agreement must:
 - (i) be in writing and signed by both parties;
 - (ii) state the date on which the arrangement commences;
 - (iii) be provided to the employee;
 - (iv) contain a provision that the employee will receive no less under the arrangement than the employee would have been entitled to if all award obligations had been met, taking account of the value of the provision of matters not comprehended by the award such as private use of an employer provided motor vehicle;
 - (v) be subject to an annual review;
 - (vi) contain details of any salary package arrangements, including the annual salary that is payable;
 - (vii) contain details of any other non-salary benefits provided to the employee such as an employer provided motor vehicle;
 - (viii) contain details of any performance pay arrangements and performance measurement indicators;
 - (ix) contain the salary for the purposes of accident make up pay; and
 - (x) contain the award level classification for the role.
- (e) An annual salary agreement may be terminated:
 - (i) by the employer or the employee giving four weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (ii) at any time, by written agreement between the employer and the employee.
- (f) On termination of an annual salary agreement, the employee will revert to the Award entitlements unless a new annual salary agreement is reached.”

Labour Market Industry Award

33. The ASU proposes the following changes:
34. Clause 25.2 provides for annual leave loading but is silent on payment of leave loading on termination. This can be remedied by inserting a new sentence to Clause 25.2 as follows:
“Where an employee’s employment has been terminated annual leave loading is payable on any untaken period of paid leave”.