



Fair Work Commission

4 Yearly Award Review

Australian Services Union Submission, Group 3 & 4 Sub Group 3A Legal Services Award (AM2014/233): In Reply

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1. In accordance with DP Clancy's Directions issued on the 14th December 2016, the ASU submits the following Reply Submission to the proposed variations to the Legal Services Award sought by "the legal firms" (Firms).
2. The Firms propose 3 variations to the Award which are all opposed by the ASU because they diminish or abolish the current entitlements of employees.
3. The first variation concerns the 'averaging of hours'. The Firms seeks to go beyond the current Award provision that allows an 'average of 38 hours per week but not exceeding 152 hours in 28 days' to one where 'the weekly average of 38 ordinary hours is achieved over a period which exceeds 28 consecutive days but does not exceed 26 weeks'. The ASU opposes this variation.
4. The Firms acknowledge that section 63 of the Fair Work Act reflects and allows the current averaging of hours provisions in the Award, but then confuse Section 64 of the Act with Section 63. Section 64 is meant for Award free employees and indeed allows the averaging of hours over a specified period of not more than 26 weeks. But here we are dealing with a safety net award which many employees in this industry are reliant upon. The current Award provision currently gives some protection to employees regarding their hours of work. The proposed variation makes their working hours less predictable, which may have a detrimental impact on both the employee's working life and family life. The NES under clause 12(6) also allows what is contained in Section 63 and the current award, but does not allow the change to the arrangement of working hours contemplated for Award free employees contained in Section 64. Thus the ASU opposes this proposed variation because it diminishes the current conditions of employees.
5. The second variation concerns 'Rest Breaks'. Currently under the Award and the Exposure draft employees have an entitlement of two 10 minute paid rest breaks. The Firms seek to vary the clause so that the two rests intervals are, 'subject to the reasonable business needs of the practice'. The Firms say in their submission that they seek less prescription and more flexibility around taking paid rest breaks. Again, we are talking about a safety net Award, which covers moderately remunerated employees who are award dependent. Why should their current entitlement be diminished? And if the rest break does not suit the 'reasonable business needs of the practice', does that mean the employee is denied the break? The ASU does not support the diminution of current Award entitlements.
6. The third variation concerns 'Special Conditions of employment - Law Graduate'. The Current Award and Exposure draft clauses are identical and give law graduates the following entitlements. Under part (a) of the current clause, the 'law graduate is entitled to leave absence with pay for study and attendance at examinations, not exceeding four days in respect of each (emphasis added) subject'.

This is a clear and explicit entitlement. The Firms seek to replace this clear entitlement with an unclear and fuzzy provision where the law graduate obtains paid study leave, 'to attend a course of instruction, and prepare for and attend examinations, that relate to the practical legal training for their admission to practice as an Australian Lawyer: (emphasis added). Compared to the current Award provision, the proposed variation is unclear and subject to interpretation by the employer as to the practical legal training required for admission to practice.

7. This has the effect that the law graduate is unclear as to their entitlement and this may lead to disputation as to the 'practical legal training for their admission'. The ASU submits that the proposed variation diminishes the clearly spelt out current provisions which could also lead to disputation. Therefore the proposed is rejected.
8. The proposed variation to part (b) of the clause is even more worrying because it makes the current entitlement subject to the agreement of the employer, which is presently not required. Also, the current clause places no cap on lectures and organized classes, whereas the proposed variation seeks a total of 20 days in any 12 month period. The proposed variation diminishes the current clause by placing caps on class attendance and subjecting the leave to employer agreement. This is to the disadvantage of the employee and thus rejected by the ASU.
9. In conclusion, none of these three proposed variations by the Firms better the lot of the employees covered by the Legal Services Award. They are all designed to serve the interests of the employers. Given that these employees are Award reliant, are not remunerated terribly well, and that all the proposed changes diminish the current entitlements of the employees, the ASU asks the Commission to reject the Firm's variations.
10. In rejecting these variations, the ASU submits that the Commission would fulfill the modern awards objective at section 134 of the Fair Work Act that modern awards should take into account the, 'relative living standards and the needs of the low paid'.