

IN THE FAIR WORK COMMISSION

Matter No: AM2016/15, AM2014/69

Section 156 - Four Yearly Review of Modern Awards –Plain Language redrafting – *Cleaning Services Award 2010*

SUBMISSION OF UNITED VOICE

1. This submission is responsive to the Decision¹ of the Full Bench dated 8 November 2018 regarding the plain language redrafting of the *Cleaning Services Award 2010* ('Cleaning Award'). Interested parties were invited to make submissions in respect of paragraphs [55], [56] and [58].

Clause 29.10 Payment of annual leave on termination

2. The characterisation of United Voice's position on payment of annual leave on termination in paragraph [54] is incorrect. There was no common position between United Voice and Ai Group (AiG) in respect of annual leave on termination.
3. We made submissions in respect of the interpretation of clause 29.10 in paragraphs 32-33 in our reply submission dated 20 October 2017 and made more detailed submissions in paragraphs 6 to 14 of our submission dated 13 August 2018.
4. Our position is that under the Cleaning Award, payment of annual leave when taken differs from payment of annual leave on termination due to the history of the award (as outlined in our submission dated 13 August 2018). Under clause 29.7, when an employee is paid annual leave on termination the employee should receive the annual leave loading of 17.5% on the ordinary time rate of pay (*inclusive* of shift allowances and weekend penalties).

Amendments to clause 24.3(a)

5. United Voice does not support the provisional view in paragraph [55] that clause 24.3(a)(iii) of the Plain Language Exposure Draft (PLED) should be deleted.
6. Clause 24.3(a) defines the employee's base rate of pay of the purposes of section 90 of the *Fair Work Act 2009* (the Act) and as such, for the purposes of the National Employment Standards (NES).

¹ [2018] FWCFB 6781

7. By deleting clause 24.3(a)(iii), an employee's entitlement to '*penalty rates paid for shift work or rostered ordinary hours of work on Saturday or Sunday*' will no longer form part of their base rate of pay for the purposes of the NES. Such a change should be avoided.

Deletion of clause 24.3(c)

8. United Voice objects to the provisional view in paragraph [56] that clause 24.3(c) of the PLED be deleted. Clause 24.3(c) is the *only* clause in the PLED that relates to payment of annual leave on termination.
9. Clause 24.3(c) simply identifies the method for calculating annual leave on termination. In the last version of the PLED (published 10 September 2018) clause 24.3(c) stated:

'Clause 24.3 also applies in calculating the amount payable to an employee by the employer for a period of untaken paid annual leave when the employment of the employee ends.'
10. Regardless of which interpretation the Commission settles on, there should remain a clause in the Cleaning Award that stipulates to employers and employees how annual leave is to be paid on termination.

Clause 24.4 Annual leave (temporary close down period)

11. United Voice has reviewed the revised clause 24.4 of the PLED and makes the following comments:
12. Clause 24.4(b) does not state that notice must be in writing. This is in contrast with Clause 29.6(a) of the Cleaning Award, which states that notice is to be in writing. Clause 24.4(b) of the PLED should be amended as follows:

*'(i) If an employer requires an employee to take annual leave under paragraph (a), then the employer must give that employee one month's notice **in writing** that they are to take annual leave for the temporary close-down.*

*(ii) However, if the employer engages an employee during the notice period, then the employer must give that employee notice of the temporary closedown **in writing** when the employer engages the employee'*
13. Clause 24.4(c) should be clearer in stipulating that the maximum close down period is 4 weeks. The clause should be amended as follows:

*'The close down period under paragraph (a) may be for up to **a maximum of four weeks plus public holidays**'.*

United Voice
23 November 2018