

IN THE FAIR WORK COMMISSION

2014 Award Review

(AM2016/13)

Community and Public Sector Union (CPSU) (PSU Group)

Submissions re: Annualised Salaries common matter Decision in [2018] FWCFB 154 and Model Clauses

Introduction

1. On 20 February 2018, the Full Bench of the Fair Work Commission issued a decision [2018] FWCFB 154 in the annualised salary common matter as part of the 2014 Modern Award Review. In that decision interested parties were invited to make further submissions on the following matters:

[134] We invite interested parties to make further submissions concerning whether:

(1) the terms of the above provisions are appropriate to be adopted as model annualised wage arrangement provisions;

(2) any existing annualised wage arrangement provision in a modern award should be varied to reflect any of the proposed model terms (subject to the conclusions stated later in this decision concerning the specific claims advanced in these proceedings);

(3) any modern award which does not currently contain an annualised wage arrangement should be varied to include one of the proposed model clauses; and

(4) annualised wage provisions are capable of having any practical application to part-time employees (including any proposals to that end).

The CPSU makes these submissions in accordance with those Directions.

2. The CPSU has previously made submissions on this matter on 18 December 2016, primarily in support of the ASU's application to vary the *Contract Call Centres Award 2010* to modify the annualised salary clause. The CPSU also has an interest in the *Telecommunications Services Award 2010* which contains an annualised salary clause similar to the *Contract Call Centres Award* and the *Broadcasting and Recorded Entertainment and Cinema's Award 2010* which contains an annualised salary clause relating to Journalists. The CPSU does not intend on making any submission specifically regarding the annualised salary provision in the *Broadcasting and Recorded Entertainment and Cinema's Award*.

(1) the terms of the above provisions are appropriate to be adopted as model annualised wage arrangement provisions;

3. The CPSU notes the statement at [129] of the decision in *Annualised Salaries [2018] FWCFB 154*. There the Full Bench expressed the view that annualised salary terms which do not require employee consent could meet the modern award objective of a fair and relevant safety net. As a matter of principle the CPSU does not believe annualised salary clauses that can be introduced without employee consent are consistent with a fair and relevant safety net. This is regardless of whether the pattern of hours of work is reasonably stable or otherwise.
4. On this basis the CPSU does not support Model Clause 1 or Model Clause 2 because those clauses allow for the implantation of an annualised salary arrangement without employee consent. The CPSU believes Model Clause 3 or Model Clause 4, which require the arrangement be agreed by an employer and an employee are more appropriate model terms to consider for inclusion in the modern awards which currently have annualised salary arrangements.
5. The CPSU supports the no disadvantage provisions in the Model Clauses which require an employer to keep appropriate records and provide a reconciliation each 12 months. These are important mechanisms of transparency which protect an employee from underpayment. The CPSU sees them as integral to the fair operation of any annualised salary arrangement.
6. Regarding termination of the arrangement as provided by Model Clauses 3 and 4, the CPSU believes 12 months is too long a period for notice. An employee who has entered such an arrangement and believes it is not working fairly should not have to wait until the 12 monthly reconciliation to be paid outstanding amounts or provide 12 months' notice to terminate the agreement.
7. The CPSU notes Model Clauses 2 and 4 set a maximum number of hours that may be worked before relevant overtime and penalty provisions apply. The CPSU supports the provisions which set maximum hours and overtime under the annualised salary arrangement as an important protection. Such provisions are more detailed and clearer protections than those provided in Model Clauses 1 or 3.
8. The CPSU also notes Model Clauses 2 and 4 set a minimum percentage above the minimum weekly wage for the annualised salary. The CPSU believes the setting of a minimum percentage above the minimum weekly wage is an attractive measure of protection to employees and employers entering annualised salary arrangements. A minimum percentage would allow an employee to more easily identify when they would be entitled to additional remuneration.
9. However, the CPSU is concerned any minimum percentage may become the default amount, which may discourage wage increases or not properly reflect the variable hours worked. The % rate may be set too low. The issues of having a 40% minimum in the *Marine Towing*

Award or a 25% the *Restaurant Award* was alluded to in its decision at [128]. Additionally, the CPSU would be concerned about the lack of a clear evidentiary basis for the Commission to set the minimum % in these awards without an extensive further process.

(2) any existing annualised wage arrangement provision in a modern award should be varied to reflect any of the proposed model terms (subject to the conclusions stated later in this decision concerning the specific claims advanced in these proceedings)

Contract Call Centres Award 2010

10. This award contains an annualised salary provision at 18.5. Significantly it is confined in application to the top three classifications in that award, being *Principal Customer Contact Leader; Clerical and Administration Employee-Level 5; and Contract Call Centre Industry Technical Associate*. If a Model Clause is to be adopted in the *Contract Call Centres Award*, the CPSU believes it should not disturb the existing application of the clause to only the top three classifications. Such a clause should not be made generally applicable to all classifications. Current provisions of clause 18.5 dealing with transfers and payment of wages which are not provided for in the Model Clauses should also be included in any annualised salary clause in this award.
11. Subject to these modifications, the CPSU would support having included in the *Contract Call Centres Award* either Model Clause 3, or Model Clause 4 if the issues raised above at [9] can be resolved adequately. The work performed by contract call centres can often be 24/7 however there would likely be variances in the industry between employees who work regular fixed patterns and those with more changeable rostering.

Telecommunications Services Award 2010

12. This award contains an annualised salary provision for the three highest award classifications in clause 15. These are *Principal Customer Contact Leader; Telecommunications Associate; and Clerical and Administration Level 5*. If a Model Clause is to be adopted in the *Telecommunications Services Award*, the CPSU believes it should not disturb the existing application of the clause to only the top three classifications. Such a clause should not be made generally applicable to all classifications. Current provisions of clause 15 dealing with transfers and payment of wages which are not provided for in the Model Clauses should also be included in any annualised salary clause in this award.
13. Subject to this modification, the CPSU would support having included in the *Telecommunications Services Award* either Model Clause 3 or Model clause 4 if the issues raised above at [9] can be dealt resolved adequately. Given the type of work that can be performed under this award which can occur outside ordinary hours, be subject to penalties and can be regular or changeable.

(3) any modern award which does not currently contain an annualised wage arrangement should be varied to include one of the proposed model clauses; and

14. The CPSU does not support the Model Clauses under discussion here being included in modern awards which do not currently have annualised salary provisions or have not been subject to this Full Bench process to include such a clause. Currently only 19 modern awards include such a clause. Given many parties with an interest in modern awards did not participate in this Full Bench, it would seem inequitable to now involve those awards so late in this process. For awards not subject to this Full Bench, the usual process of evidence based applications should be followed. The CPSU does not believe such clauses should be extended to other awards as part of this process.

(4) annualised wage provisions are capable of having any practical application to part-time employees (including any proposals to that end).

15. The CPSU would not support the annualised wage provisions being extended to part time employees. For example, clause 12.5 of the *Contract Call Centres Award* provides for part-time employees to receive overtime in excess of the employees' applicable pattern of hours. An annualised salary arrangement could disturb or confuse the application of the part-time employees working hours arrangements.

CPSU – SYDNEY

20 March 2018