



ASU Reply Submission to Fair Work Commission

Four yearly review of modern awards

Part 2-3, Div 4 – s. 156

AM2016/13 – Annualised Salaries

Clerks – Private Sector Award 2010 & Others

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Date:	3 rd April, 2018

AiG Submission

1. The ASU has read the submission of AiG dated 27th March 2018 and note they are opposed to further safeguards deemed necessary by the Full Bench. They also claim a requirement to keep records of starting and finishing times for employees paid an annual salary as being unworkable (2.3; paragraph 24).
2. The flexibilities AiG claims employers lose include their candid admission that managerial, professional and some other employees (such as those employed under the Clerks Private Sector, Legal Services and Contract Call Centre - "Clerical related" modern awards) "*have smart phones..*" and "*..read and respond to emails outside of ordinary working hours*". Further these same employees: "*.. formulate work-related ideas and strategies outside of work*" [paragraph 23]. Clearly AiG believe that certain modern awards should promote an open ended arrangement for work outside of ordinary hours.
3. Unfortunately AiG's submissions reflect the reality of an increasing number of employees because of their forced working arrangements i.e. without their agreement; but this should not be promulgated by modern award provisions which reflect minimum safety net conditions of employment consistent with the record keeping concerns and safeguards raised by the Full Bench in this matter.
4. AiG claim any annualised salary arrangement in an award needs to "*have regard to the patterns of work in an occupation, industry or enterprise (s139(1)(f)(i))*" and that the Commission should not lightly alter existing annualised salary arrangements [paragraphs 26 and 27]. The ASU would argue that the opposite has been the rule for consideration of clerical and administrative patterns of work in the private sector. There has never been any proper regard for clerical and administrative patterns of work in the private sector - just assumptions. The ASU submits, with respect, that the Full Bench now with the four yearly review has sufficient discretion to significantly alter the Clerical related awards to reflect annualised wage arrangements by agreement and provide all the necessary record keeping safeguards i.e. as per Model Clause 3.
5. AiG claim [at paragraph 61] that most existing annualised salary arrangements reflect the outcome of lengthy negotiations and/or Commission proceedings; yet this was not the case with the Clerks Private Sector or the Legal Services awards.

6. AiG's example [at paragraph 62] of the annualised salary arrangement in the Contract Call Centres Award being developed with detailed regard to the circumstances of an industry or occupation and needs or characteristics of employers and employees covered by the instrument are correct - including restricting the annualised arrangements to the top classifications. Like every other award with an annualised salary clause it needs to be altered to address the general concerns raised by the Full Bench.
7. The ASU was indeed party to lengthy negotiations in relation to the Contract Call Centres Award coordinated and consent approved by the Commission. However the related Clerks Private Sector and Legal Services awards were never provided with this same regard even though their clerical and administrative classifications are essentially the same as those in the Contract Call Centres award classification structure.
8. AiG along with other employer peak bodies have never been required to have any regard to the patterns of work in the private sector clerical and administrative occupation or the Legal Services industry as the relevant modern awards were created on the basis of untested assumptions by the award modernisation process.
9. The ASU submits the Full Bench has identified universal problems and weaknesses associated with annualised wage arrangements and as such now has the discretion to apply option 3 as the most appropriate for the Clerks Private Sector, Legal Services and Contract Call Centre (top classifications) awards.
10. The ASU also notes that AiG claim the annualised wage arrangement in the Clerks Private Sector award already applies to part-time workers and rejects such an express interpretation. There is no evidence that employers have ever claimed or required annualised wage arrangements for part-time workers covered by the award.