



Fair Work Commission

4 Yearly Review of Modern award

Response to Exposure Draft Submissions

(AM2014/219) Clerks - Private Sector Award 2010

Submitter: David Smith, National Secretary

Organisation: Australian Services Union

Address: 116 Queensberry Street
Carlton South, Victoria, 3053

Phone: 03 9342 1400

Fax: 03 9342 1499

Email: dsmith@asu.asn.au

28th February, 2017

1. The Australian Municipal, Administrative, Clerical and Services Union (ASU) makes these submissions on the – Clerks - Private Sector Award 2010 – Plain Language Draft (3 February 2017) ('PLD') in accordance with the Statement issued by the Full Bench on 3 February 2017.

Clause 4 Coverage

2. The ASU supports the inclusion of the term "administrative work" along with the continued use of the term "clerical work" in the PLD. However clause 4.1(a) & (b) should be amended to read "*clerical and/or administrative work*", ie the addition of the word "or" as otherwise the coverage clause could be read down as requiring application to work that is both clerical and administrative in nature.
3. Removal of the definition of '*clerical work*'. While the ASU appreciates that 'clerical work' in the revised ED focuses on tasks and duties performed by lower classification levels and does not reflect the range of duties contemplated in the entirety of the Award, removal of the definition may create some confusion. For example 'clerical work' includes 'cash handling' in the definition. If the 'clerical work' definition was removed there is potential for confusion for the coverage of 'cash handling' which is otherwise not explicitly mentioned in the CPS Award.

Clause 10 Part-time employment

4. Parties are asked to confirm whether the re-drafted clauses accurately reflect the intention of current modern award clause 11.4. The ASU submits that the re-drafted clause does accurately reflect the intention of current modern award clause 11.4.

Clause 11 Casual employment

5. Parties are asked whether clause 11.4 should specify whether the minimum payment applies 'for on each engagement'. The ASU submits that the PLD clause 11.4 "An employer must pay a casual employee for a minimum of 3 hours' work on each engagement even if they are rostered to work for fewer than 3 consecutive hours" should remain in the PLD given the inherent irregularity of casual employment.

Clause 13 Ordinary hours of work (employees not engaged on shifts)

6. Parties are asked to confirm whether the spread of hours can be increased by one hour at both ends. The ASU submits that the Award operates to allow the spread of hours to be altered by a maximum of one hour in a day, but not by an hour before the engagement and an hour at the conclusion of the engagement, that is potentially up to two hours in the day.
7. Parties are asked to confirm whether the re-drafted clause 13.7 accurately reflects the intention of current modern award clause 25.1(b). The ASU submits that the example posted at PLD clause 25.4(c) reflects the intention of clause 25.1(b).

Clause 14 Rostered days off (employees not engaged on shifts)

8. Parties are asked to confirm whether the re-drafted clause 14 accurately reflects the intention of current modern award clauses 25.3 and 25.4. The ASU submits that the re-drafted clause 15 reflects the intention of current modern award clauses 25.3 and 25.4.

Clause 15 Breaks (employees not engaged on shifts)

9. Parties are asked to confirm whether the re-drafted clause 15 accurately reflects the intention of current modern award clauses 26.1 and 26.2. The ASU submits that the re-drafted clause 15 reflects the intention of current modern award clauses 26.1 and 26.2.
10. Clause 15.4 states that *“An employer must pay an employee who is required to work through their meal break 200% of the minimum hourly rate until a meal break is taken”*. The use of “minimum hourly rate” is repeated further in the PLD particularly with respect to penalties, overtime and shiftwork payments. “Minimum hourly rate” is not a term used in the current modern award and the effect will be that penalties, overtime and shiftwork payments will be applied on the minimum hourly rate regardless of an employee being paid more than the minimum hourly rate.

Clause 21. Penalty rates (employees not engaged on shifts)

11. Parties are asked to confirm whether the re-drafted clause 21.3 accurately reflects the

intention of current modern award clauses 31.3 and whether it is better placed in the Penalty rates or Overtime clause. The ASU submits that the re-drafted clause 21.3 reflects the intention of current modern award clause 31.3.

12. The ASU submits that the clause is better placed in the Penalty Rates clause as it addresses the payment of penalties on a public holiday.

Clause 25 Shiftwork definitions

13. Given the different provisions for employees on shiftwork, including rostering and breaks, parties are asked to clarify when the provision in this part applies. The ASU submits that the provisions in the clause 25.1 of the PLD apply when an employee is working shifts receiving penalties for working those shifts. To this end when an employer employs an employee as a shiftworker the employer must clearly notify the shiftwork status to the employee.
14. At clause 25.2 parties are asked to confirm whether the spread of hours can be increased by one hour at both ends. The ASU submits that the Award operates to allow the spread of hours to be altered by a maximum of one hour in a day, but not by an hour before the engagement and an hour at the conclusion of the engagement, that is potentially up to two hours in the day.
15. Further the ASU submits that where employees are required to work shifts this should be clearly identified to the employee in writing by the employer.

Clause 26.3 Public holidays

16. Parties are asked to confirm whether the re-drafted clause 26.3 accurately reflects the intention of current modern award clause 31.3 and whether it applies to shiftworkers.
17. The ASU submits that the re-drafted clause 26.3 reflects the intention of current modern award clause 31.3.

Clause 28 Breaks for shiftwork

18. Parties are asked to confirm whether the re-drafted clause 28 accurately reflects the intention of current modern award clauses 26.1, 26.2 and 28.4(f).

19. The ASU submits that the re-drafted clause 28 reflects the intention of current modern award clauses 26.1, 26.2 and 28.4(f).

Australian Services Union
28 February 2017