

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

13 August 2018

1. United Voice refers to the Joint Report of United Voice and Ai Group filed today 13 August 2018 regarding Item 35, which relates to clause 29. Annual leave of the *Cleaning Services Industry Award 2010* ('Cleaning Award').
2. United Voice makes this submission in support of our position as the parties were not able to reach agreement on the appropriate wording to reflect clauses 29.3 and 29.4 of the Cleaning Award in the Cleaning Services Award Plain Language Exposure Draft ('PLED'), and the parties were not able to reach agreement on the interpretation of clause 29.7.
3. References to clauses within this submission are to the Cleaning Award, unless otherwise identified.

The payment of annual leave when taken (Clauses 29.3 and 29.4)

4. Clause 25.3 Payment for annual leave of the PLED dated 25 January 2018 accurately reflects clauses 29.3 Definition of ordinary pay and 29.4 Payment of annual leave of the Cleaning Award.

The payment of annual leave on termination (Clause 29.10)

5. We refer to paragraphs 32-33 of our reply submission dated 20 October 2017 and also make the following additional statements.
6. The proposed amendment in relation to Item 35: Clause 25.3(c) in the document titled 'AM2016/15 –summary- agenda items for conference –Cleaning Award' dated 28 February 2018 ('Proposed Amendment') states:

'(c) The employer must pay an employee for a period of untaken paid annual leave when the employment of the employee ends, a loading of 17.5% calculated on the employee's base rate of pay as defined in paragraph (a).'
7. The employee's base rate of pay in clause 25.3(a) of the PLED is defined as:

'...the employee's base rate of pay for the employee's ordinary hours of work in the period must be taken to include any of the following that are payable to the employee:

- (i) a leading hand allowance; and*
- (ii) a first aid allowance; and*
- (iii) penalty rates paid for shiftwork or rostered ordinary hours of work on a Saturday or Sunday; and*
- (iv) a part-time allowance for part-time employees working shiftwork (Monday to Friday) or rostered ordinary hours on a Saturday or a Sunday.'*

8. The Proposed Amendment is an accurate reflection of clause 29.7 of the Cleaning Award.
9. The language of clause 29 in the Cleaning Award is complex. This complexity is compounded by the fact that there is no definition of '*ordinary time rate of pay*' within the Cleaning Award. In terms of the background to the clause, the entitlement to annual leave on termination varied in the pre-modern awards that informed the Cleaning Award. The NSW *Cleaning and Building Services Contractors (State) Award* was one of the key awards incorporated into the modern Cleaning Award.
10. Under clause 20.(i) of the *Cleaning and Building Services Contractors (State) Award*, an annual leave loading of 17.5% was paid '*in addition to the rates of pay paid for the applicable period of leave and in addition to the benefits prescribed by clause 19, Annual Leave.*'
11. Under clause 19.(i) of the *Cleaning and Building Services Contractors (State) Award*, annual leave was paid in accordance with the *Annual Holidays Act 1944 (NSW)*.
12. Under section 2(2) of the *Annual Holidays Act 1944*, '*ordinary time rate of pay*' was defined as:

'(a) the term

"ordinary time rate of pay" in the case of a worker who is remunerated in relation to an ordinary time rate of pay fixed by the terms of the worker's employment means the time rate of pay so fixed for the worker's work under the terms of the worker's employment, including shift allowances relating to ordinary time and weekend penalties relating to ordinary time the worker would have worked on days other than public holidays if the worker had not been on annual holidays, but does not include any other amount payable to the worker in respect of shift work, overtime or penalty rates, and where two or more time rates of pay are so fixed means the higher or highest of those rates,

(a1) where a worker is remunerated otherwise than in relation to an ordinary time rate of pay so fixed, or partly in relation to an ordinary time rate of pay so fixed and

partly in relation to any other manner, or where no ordinary time rate of pay is so fixed for a worker's work under the terms of the worker's employment, the worker's ordinary pay shall be deemed to be the average weekly wage earned by the worker during the period actually worked by the worker during the period of twelve months immediately preceding the annual holiday or, as the case may be, during the period of employment in respect of which a right to payment under section 4 (3) or under section 4A accrues.

For the purposes of this paragraph the average weekly wage earned by a worker shall be the average of the amounts received by the worker each week under the terms of the worker's employment including shift allowances relating to ordinary time and weekend penalties relating to ordinary time the worker would have worked on days other than public holidays if the worker had not been on annual holiday, and excluding any other amount payable to the worker in respect of shift work, overtime or penalty rates,

13. *'Ordinary time rate of pay' referred to an amount that was inclusive of 'shift allowances relating to ordinary time and weekend penalties relating to ordinary time the worker would have worked on days other than public holidays if the worker had not been on annual holidays'. In accordance with clause 20.(i) of the Cleaning and Building Services Contractors (State) Award, the annual leave loading of 17.5% was paid on this amount, which was inclusive of shift allowances and weekend penalties.*
14. In the modern Cleaning Services award, the entitlement to receive shift loadings *and* the annual leave loading was separated when annual leave is taken during employment in clause 29.4 of the Cleaning Services award; however this entitlement was not separated in clause 29.7 of the award. As such the Proposed Amendment is an accurate reflection of the current entitlement and should be adopted.

UNITED VOICE

13 August 2018