



**Australian Security Industry  
Association Limited**

*The peak body for  
security professionals*

**IN THE FAIR WORK COMMISSION - Matter No: AM2016/15, AM2014/89**

**Section 156 - Four Yearly Review of Modern Awards – Plain Language  
redrafting – Security Services**

14 September 2018

The background of the page features a large, semi-transparent blue graphic. On the left, the letters 'ASIAL' are written in a large, bold, sans-serif font. To the right of the text is a dark blue silhouette of the map of Australia. The entire graphic is set against a lighter blue gradient background.

## About the Australian Security Industry Association Limited (ASIAL)

ASIAL is the peak national body representing security professionals in Australia. The Association is comprised of over 2,600 members ranging from large corporate entities to small and medium sized operations.

### ASIAL is:

- ✓ a Registered Organisation of Employers under the *Fair Work (Registered Organisations) Act 2009*
- ✓ an Approved Security Industry Association under security legislation in the Australian Capital Territory, Queensland and Victoria
- ✓ an accredited Registrar under the Australian Communications & Media Authority (ACMA) *Cabling Provider Rules*

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

Submission in reply to the United Voice submission of 7 September 2018

1. ASIAL makes this submission pursuant to the Directions of the Fair Work Commission dated 20 August 2018 in the above matter.
2. ASIAL seeks to vary clause 24.10 of the Security Services Industry Award 2010 ('Security Award') for reasons given in its submissions dated 25 June 2018.
3. ASIAL characterises 24.10 of the current PLED as a drafting error for the following reasons:
  - i. there can be no other explanation or justification for providing employees with a greater benefit on termination of employment under this award than had previously existed under any of the pre-reform awards covering security employees;
  - ii. there were no submissions put by either the union (then the Liquor Hospitality and Miscellaneous Workers' Union) or any other party for such a variation during the making of the Security Services Industry Award 2010;
  - iii. there is inconsistency between the application of 24.10 and 24.6 (a) and (b); and
  - iv. there is no reason why employees would be granted a greater benefit for untaken annual leave on termination of employment than is available to them if leave was taken during the course of employment.
4. At points 7 and 8 of its submission, United Voice states that *"Sub clause 24.10 is intentional in its effect. Employees do not automatically receive payment in accordance with sub clause 24.6(a) and (b). The clause states that 'the employer must also pay to the employee a loading of 17.5% in accordance with clause 24.6(b) unless the employee has been dismissed for misconduct."* ASIAL does not argue that employees who are dismissed for misconduct are not entitled to the loading(s). Indeed, this is common in many modern awards.
5. However, ASIAL does not agree that the intent of the drafter was to provide shift workers with both payment of shift penalties **and** a 17.5% loading on the base rate.
6. ASIAL submits that sub clauses 24.10 and 24.6 (a) and (b) are designed to be read together as part of the Clause 24 Annual Leave, dealing with the payment of annual leave. There should be no inconsistency between them.
7. ASIAL has found no other modern award with such a generous provision and, as stated in ASIAL submissions of 25 June 2018, no pre-reform Security award includes such a provision. Many modern awards are actually silent on the payment of annual leave on termination.
8. The issue of payment of outstanding annual leave entitlements on termination of employment was first raised by ASIAL in conferences held by Commissioner Roberts dealing with the 2<sup>nd</sup> year review of modern awards in 2012. It ASIAL's understanding that the issue would be forwarded to the President to determine how the matter should be dealt with.
9. ASIAL next raised the matter in submissions to the Fair Work Commission 4 yearly review on 13 August 2014.

10. Modern awards need to be simple, easy to understand and fair to both employees and employers. The conflict between clause 24.10 and 24.6(a) and (b) creates confusion and is an unfair cost burden arising from the employee getting both the shift penalty **and** the 17.5% loading, which is contrary to the intention in Clause(s) 26(a) and (b), where payment is for either one or the other – **not both**.
11. The introduction of Modern Awards was not intended to disadvantage employers. In the instance of payment of annual leave on termination it is clear that it has disadvantaged employers.
12. When determining this matter, the Fair Work Commission should give consideration to the Fair Work Act 2009 - Sect 134, in particular:
  - (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
  - (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards
13. ASIAL proposes that having regard to the above and its submissions of 25 June 2018 that the application to vary the Security Services Industry Award 2010, the variation as sought should be made.



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ASIAL