

Security Services Industry Award

Revised list of outstanding issues—July 2018

This document summarises the outstanding issues in relation to the plain language re-drafting of the Security Services Industry Award 2010 following a Statement [\[2018\] FWC 3820](#) issued on 29 June 2018. **Parties should bring this document to the Conference on Thursday, 16 August 2018.**

The following items are outstanding:

Items 30, 32 & 37

These items are to be determined by this Full Bench on the Submissions before the Commission ([\[2017\] FWC 5867](#) at [2]). Note: Item 33 related to the lead in words at clause 15.1 and is resolved – see [\[2018\] FWC 3820](#) at [8].

Item 55

This item was referred back to the expert drafter for comment – see [\[2018\] FWC 3820](#) at [13].

Item 56

ASIAL made an [application](#) on 26 June 2018 to vary clause 24.10 of the current award.

Attachment A to this document sets out the parties' submissions, transcripts, drafting comments and comparisons of the current award and PLED clauses for each outstanding item listed above.

In [\[2018\] FWC 3820](#) at [26], interested parties were invited to review the amended PLED published on 16 July 2018 and the list of outstanding issues and advise the Commission whether there are any *further issues* that require determination by **4.00 pm, Monday 30 July 2018**.

A conference will be held on **14 August 2018 at 4.30 pm at Sydney** (see [\[2018\] FWC 3820](#) at [26]). The purpose of the conference is to discuss the outstanding issues and provide parties with a final opportunity to advance any further submissions, or clarify and comment on their submissions in relation to the outstanding items before the issues are determined.

Note: following United Voice's [submission](#) dated 27 July 2018, the definition of 'relieving officer' at clause 2 of the PLED has been updated as follows:

relieving officer means an employee who, ~~by agreement with the employer,~~ is appointed ~~by the employer~~ for the purpose of relieving another security officer at short notice.

This reflects the resolved position in relation to item 40 – clause 19.6 – relieving officer allowance.

Item 30. CLAUSE 14.4 – BREAKS – *To be determined by the Full Bench on submissions before the Commission* [\[2017\] FWC 5867](#)

ABI & NSWBC – [12 September 2017 submission](#), paragraph 10:

10.1 A provision similar to Clause 14.4 is not found in the current Award. It does not follow that an employee who is unable to be provided with an unpaid meal break due to operational requirements will necessarily be able to be provided with a paid meal break. Our clients submit this clause should be removed.

United Voice – [20 October 2017 reply submission](#), paragraph 30:

30. ABI have submitted that a provision similar to clause 14.4 is not found in the current award. We disagree. Clause 14.4 retains the meaning within clause 21.6(a).

Comparison of relevant clauses

Current award clause	PLED clause
21.6 Meal and crib breaks (a) Meal breaks Except where it is operationally impracticable, an employee will be granted an unpaid meal break of not less than 30 minutes where a shift exceeds five hours duration. For the purpose of this subclause it will be operationally impractical to grant an unpaid meal break unless the employee is permitted to leave the client's premises or be unavailable for work during the period of the meal break.	14.4 However, the meal break must be a paid meal break if the employee is not permitted to leave the workplace, or to be unavailable for work, during the break.

Relevant transcript– [8 November 2017](#)

PN371 MS THOMSON: Yes, your Honour, so it's our submission that this actually represents a departure from the current arrangements in terms of the taking of breaks. It contemplates a situation that's not contemplated in the current award.

PN372 JUSTICE ROSS: Are you content to rely on what you've said in your written submissions about this and the full bench can determine that issue?

PN373 MS THOMSON: Yes, thank you, your Honour.

PN374 JUSTICE ROSS: Similarly with United Voice?

PN375 MS DABARERA: Yes, your Honour.

PN376 JUSTICE ROSS: All right, anything further with relation to that? No?

PN377 MR DELANEY: Not from ASIL, your Honour.

Item 32. CLAUSE 14.5 – BREAKS BETWEEN WORK PERIODS – *To be determined by the Full Bench on submissions before the Commission* [\[2017\] FWC 5867](#)

ASIAL – [6 October 2017 submission](#), paragraph 18:

18. **Clause 14.5 Breaks.** ASIAL submits that Clause 21.3 of the Award ‘*Break between successive shifts*’ is more appropriate. Therefor 14.5 should read: ‘*Each ordinary time shift must be separated from any subsequent ordinary time shift by a minimum break of not less than eight hours*’.

United Voice – [20 October 2017 reply submission](#), paragraph 32:

32. ASIAL have submitted that the wording in clause 21.3 of the current award is preferable to the wording in clause 14.5 of the plain language draft. We prefer the plain language draft wording.

Comparison of relevant clauses

Current award clause	PLED clause
21.3 Break between successive shifts Each ordinary time shift must be separated from any subsequent ordinary time shift by a minimum break of not less than eight hours.	14.5 Breaks between work periods (a) An employee must have a minimum break of 8 hours between finishing work on one shift of ordinary hours (including any overtime worked immediately after it) and starting work on the next shift of ordinary hours (including any overtime worked immediately before it).

Relevant transcript–[8 November 2017](#)

PN380 JUSTICE ROSS: Item 32?

PN381 MR DELANEY: We believe that the submission that we've made is appropriate, your Honour.

PN382 JUSTICE ROSS: All right.

PN383 MR DELANEY: We would press it. It's really about rostering. It's not about overtime so we would press that. I think United Voice are almost in agreement with us.

PN384 MS DABARERA: Your Honour, actually our position is that we don't have a particularly strong position on it, your Honour.

PN385 JUSTICE ROSS: Well, that matter can then be determined on the basis of what the parties have said about it. Let's go to item 33.

Item 37. CLAUSE 19.1 – ALLOWANCES – *To be determined by the Full Bench on submissions before the Commission* [\[2017\] FWC 5867](#)

United Voice – [submission 6 October 2017](#), paragraphs 29 – 32

29. The plain language draft alters the language regarding the payment of allowances. The current award language regarding allowances is clearer and more direct than the proposed plain language draft. [*United Voice inserted comparison table of both clauses here... see below*].

30. The phrasing in the current clause 15, which states that ‘*employers must pay to an employee such allowances*’, is more direct and simple to understand than the words in the plain language clause 19.1, which states that ‘*clause 19 gives employees an entitlement to monetary allowances*’.

31. Stating that ‘*employers must pay to an employee such allowances*’ clearly identifies that there is an obligation on the employer to pay.

32. The current wording in clause 15 of the Security Award should be retained.

Comparison of relevant clauses

Current award clause	PLED clause
15.1 Allowance rates Employers must pay to an employee such allowances as the employee is entitled to under this clause at the following rates (which are expressed as a percentage of the standard rate being the minimum weekly wage for the Security Officer Level 3 classification):	19.1 Clause 19 gives employees an entitlement to monetary allowances of specified kinds in specified circumstances.

Relevant transcript–[8 November 2017](#)

PN403 Item 37.

PN404 MS DABARERA: Your Honour, again, this is similar to the issue we raised in relation to the allowances clause in the Cleaning Award in that we think the current award is a lot clearer.

PN405 JUSTICE ROSS: Yes.

PN406 MS DABARERA: Again, we would be happy to proceed with that being decided on the submissions.

PN407 JUSTICE ROSS: Thank you.

PN408 MR DELANEY: ASA agrees that the current award would be more appropriate, your Honour.

Item 55. CLAUSE 23.4(e) – PAYMENT FOR PUBLIC HOLIDAYS FALLING IN ANNUAL LEAVE SHUTDOWN PERIOD – *Referred to plain language expert* – [\[2018\] FWC 3820](#) at [13]

United Voice – [submission 6 October 2017](#), paragraphs 50 – 54

50. The plain language draft removes entitlements for employees in regards to a temporary close-down period. [*United Voice inserted comparison table of both clauses here... see below*].

51. The current clause in the Security Award, clause 24.9(c), provides that public holidays that fall within the period of the close-down period will be paid. There is no equivalent entitlement in the plain language draft.

52. Whilst the National Employment Standards do provide that public holidays that fall within a period of annual leave will be paid as a public holiday, there is no such provision regarding public holidays that fall within a period of leave without pay.

53. If the entitlement in clause 24.9(c) is removed from the Security Award, an employee who is on a period of leave without pay during a temporary close-down period would lose their entitlement to be paid for public holidays during that period.

54. The current clause 24.9(c) should be retained.

Comparison of relevant clauses

Current award clause	PLED clause
29.4 (c) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.	23.4(e) In determining how many days' leave an employee must take to cover a temporary close down period, any day during that period that is a public holiday is to be disregarded. NOTE: Public holiday entitlements are provided for in the NES.

Relevant transcript

PN89 JUSTICE ROSS: Item 55, and the proposed amendment to 23.3, and this is a temporary close down. This was United Voice.

PN90 MS DABARERA: Yes, your Honour, we're mostly satisfied with the clause. We have one comment in relation to 23.4(e) which is in relation to the public holiday. Now, in that proposed clause it says:

PN91 *An employee must be taken not to be on leave on any public holiday that falls during a temporary close down period.*

PN92 JUSTICE ROSS: Yes.

PN93 MS DABARERA: Under the current clause - - -

PN94 JUSTICE ROSS: Yes. Which is?

PN95 MS DABARERA: 24.9(c).

PN96 JUSTICE ROSS: Nine, yes. Nine?

PN97 MS DABARERA: (c).

PN98 JUSTICE ROSS: Yes:

PN99 *Public holidays that fall within the close down period will be paid as provided for this award and will not count as a day of annual leave or leave without pay.*

PN100 MS DABARERA: Yes, your Honour. We believe that the proposed amendment could be clarified by stating that it needs to be paid in accordance with the award.

PN101 JUSTICE ROSS: So it could – before the words, “an employee must be taken not to have taken leave on a public holiday”, it could say – well, yes. No, I follow. All right. I'll put that issue back to the drafter and we'll see what they come up with.

PN102 MS DABARERA: Thank you.

Plain language expert proposed two alternative amended clauses as follows:

Option 1:

(e) An employee must be taken not to be on leave on any public holiday that falls during a temporary close down period. The employer is to pay the employee as the Award requires.

The expert also suggested an example could be included to clarify Option 1:

Example

An employer has arranged a temporary close down period that includes New Year's Day.

For each employee who would normally have worked on the day that is New Year's Day, the employee must pay them their normal rate of pay for that day as though:

- it were not a public holiday; and
- they had worked that day.

So if on the day that is New Year's Day the employee would have worked 8 hours at their ordinary hourly rate and 2 hours at 150% of their ordinary hourly rate, then they are to be paid for that same number of hours and at those same rates.

Option 2:

(e) An employee must be taken not to be on leave on any public holiday that falls during a temporary close down period. If the only reason the employee is not working on that public holiday is that there is a temporary close down period, then the employer must pay the employee as the Award requires.

In accordance with [\[2018\] FWC 3820](#) at [26], interested parties are invited to review these proposed amendments by **4.00 pm, Monday 30 July 2018.**

In response to the proposed amendments:

United Voice – [submission - further issues 27 July 2018](#), page 1

In the Draft list of outstanding issues published on 23 July 2018 the drafter suggested two options for addressing the concern raised by United Voice.

United Voice prefers Option 1, with the following amendment: ‘The employer is to pay the employee for the public holiday as the Award requires’. The insertion of the words ‘for the public holiday’ provides clarity as to what the employee is being paid for in this clause.

We do not support the wording in Option 2 as it introduces unnecessary complexity into the clause. It is irrelevant as to whether the temporary close down period is the ‘only reason’ an employee is not working on a public holiday. All that is relevant under current clause 24.9(c) of the current Security Award is that there is a period of temporary close down, the employee is on leave during this period and there is a public holiday within that period of temporary close down.

Item 56. CLAUSE 24.10 of current award – PAYMENT OF ACCRUED LEAVE OF TERMINATION – ASIAL instructed to make a separate application to vary the award – [\[2018\] FWC 3820](#) at [25] – ASIAL [application](#) filed 25 June 2018

Extract of ASIAL [application](#) page 2

This application seeks to vary *Clause 24.10 ‘Payment of accrued leave on termination’* of the *Security Services Industry Award 2010 (MA 000016)* (‘Security Award’).

1. The variation is necessary to achieve the modern awards objective (s. 157), specifically, to remove what ASIAL submits is a drafting error.
2. ASIAL submits that the effect of current clause 24.10 is to confer on employees a greater benefit on termination of employment than would be available had they taken leave during the course of employment.
3. It also confers a greater benefit than available under any of the pre-reform awards.
4. ASIAL believes that the original drafting of this clause into the Security Award was an error not identified during the making of the award.
5. The original award modernisation request by Julia Gillard listed among the objects that , ‘*modern awards:*

(a) must be simple to understand and easy to apply, and must reduce the regulatory burden on business; and

(b) together with any legislated employment standards, must provide a fair minimum safety net of enforceable terms and conditions of employment for employees;’ and

The creation of modern awards was not intended to:

(c) disadvantage employees;

(d) increase costs for employers;’

ASIAL submits that this clause fails to meet these Modern Award objectives.

Extract of ASIAL [application](#) — Draft Determination

A. It is ordered that the above award be varied as follows:

1. Amend clause 24.10 by inserting the below wording:

24.10 Payment of accrued annual leave on termination

Where an employee is entitled to a payment of unused annual leave on termination of employment the employer must pay to the employee an amount calculated in accordance with clause 24.6.

Comparison of relevant clauses

Current award clause 24.10	Proposed amendment
Where an employee is entitled to a payment on termination of employment as provided in s.90(2) of the Act, the employer must also pay to the employee an amount calculated in accordance with clause 24.6(a). 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.	Where an employee is entitled to a payment of unused annual leave on termination of employment the employer must pay to the employee an amount calculated in accordance with clause 24.6.

United Voice – [submission - further issues 27 July 2018](#), page 2

We note that Item 56 has been included in the Draft List of outstanding issues.

Item 56 concerns a substantive change to clause 24.10 of the Security Award. ASIAL seek to reduce an employee’s payment for annual leave on termination on the basis of what they allege was an error during the Award Modernisation process. United Voice disputes their position.

We refer to paragraphs 112 to 121 of the transcript from the Conference dated 22 June 2018. It was agreed at the Conference that this matter would be dealt with as a substantive issue and listed for mention outside of the plain language re-drafting process. This should be noted in the Draft list of outstanding issues.