



**ASU Reply
Submission to Fair Work Commission**

**4 Yearly Review of modern awards
Part 2-3, Div 4 – s. 156**

**AM2016/15 – Clerks – Private Sector Award 2010 – Plain
Language re-drafting**

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1. The Australian Municipal, Administrative, Clerical and Services Union ('ASU') makes this submission in relation to the – *Clerks - Private Sector Award 2010* – Plain Language Draft ('PLD') in reply to further submissions made by the Motor Trader's Association of New South Wales ('MTA NSW') and the Australian Industry Group ('AiG') as per the Decision [2018 FWCFB 5553] issued by the Fair Work Commission Full Bench on 6 September 2018.

MTA NSW

2. The ASU acknowledges the MTA NSW may take issue in relation to the 'minimum weekly rate' and 'minimum hourly rate' calculations being inconsistent ie rounding up or down for weekly rates.
3. However the issue is a common modern award issue re Schedule B; and should be dealt with, if at all, as a common issue rather than solely with respect to the Clerks Private Sector award.

AiG

First Aid allowance

4. The AiG proposal for proportional payment of the First Aid allowance for part time employees is strongly opposed by the ASU as it represents a loss of an entitlement. The ASU maintains that it is inherently unfair to insist on a loss of entitlement through the plain language drafting process given the unique history of the making of modern awards.
5. As AiG have argued in relation to enhanced employee entitlements elsewhere in their submissions at paragraph 14; in the context of these proceedings, which are focused on re-writing the Award in 'plain language' without changing the substantive meaning of current award terms; the ASU submits that it is equally not appropriate for provisions to be amended to reduce an employee entitlement where this is not supported by submissions, evidence or other material.

Payment for working overtime

6. The ASU supports the Full Bench decision to remove the requirement that an employee must be available to work for 4 hours on a Sunday as it has little practical work and can lead to disputation about when an employee is available. The ASU therefore opposes AiG's proposed clause 21.3 in paragraph 319 of their submissions.
7. Likewise the ASU is opposed to AiG's proposed 4 hour minimum availability amendment to clause 22.4(c) of the Exposure Draft for the same reasons.
8. The ASU does not support AiG's proposed amendments to clauses 23.3 and 23.4 as it only adds confusion to the application of the traditional entitlement of a Rest Period after working overtime.

Shiftwork

9. The ASU rejects the notion of mixing shift work and ordinary day work. An employee is either a shift worker or they are not; and the two types of employment arrangements should not be conflated. Over time many employers have increasingly attempted to redefine shift work so as shift hours of work during the ordinary spread of hours is not recognised as 'Shift work'.
10. The ASU rejects the notion that an employee may perform both daywork and shiftwork at the same time and modern award provisions should not enable the practise.

CONCLUSION

11. In addition to paragraphs 1 to 10 in this submission; the ASU seeks to reserve its rights to make further submissions should there be late employer submissions or there are further questions raised and submissions sought by the Full Bench in this matter.