

IN THE FAIR WORK COMMISSION

Matter No: AM2016/15

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

SUBMISSION OF UNITED VOICE

1. This submission is responsive to the Statement¹ of the Full Bench dated 28 February 2019 regarding a status update on the plain language redrafting process.
2. Interested parties were invited to make submissions in respect of the Statement by 22 March 2019. We apologise for the delay in these submissions and seek leave to have these accepted for filing. We note there is still a reasonable period of time prior to the filing date for submissions in reply, which is 19 April 2019.

Annual leave loading

3. United Voice has a significant interest in a number of affected awards including the *Aged Care Award 2010*, the *Cleaning Services Award 2010*, the *Educational Services (Teachers) Award 2010*, the *Food, Beverage and Tobacco Manufacturing Award 2010*, the *Social, Community, Home Care and Disability Services Industry Award 2010*.
4. United Voice has concerns with the adoption of the wording suggested by Ai Group in [67] of the Statement as the proposed clause refers to ‘*minimum hourly rate*’ and this would lower the rate of payment for employees who have an ordinary hourly pay (inclusive of all-purpose allowances). The wording of the proposed clause is also arguably less ‘*plain language*’ than the clause it seeks to replace.

Shutdown provisions

5. United Voice has a significant interest in a number of affected awards including the *Ambulance and Patient Transport Industry Award 2010*, the *Children’s Services Award 2010*, the *Cleaning Services Award 2010*, the *Food, Beverage and Tobacco Manufacturing Award 2010*, the *Hospitality Industry (General) Award 2010*, the *Registered and Licensed Clubs Award 2010*, the *Restaurant Industry Award 2010* and the *Security Services Industry Award 2010*.
6. United Voice does not agree that the model term at Attachment D should be inserted into modern awards that currently contain shutdown provisions.

¹ [2019] FWCFB 1255

7. United Voice has a claim regarding annual leave shut down within the substantive review of the *Children's Services Award 2010*, which we outlined in paragraphs [213]-[263] of our submission dated 15 March 2019.²
8. In summary, our primary position is that a term within a modern award allowing an employer to direct an employee to take unpaid leave as part of a close down may not be a permitted term under the *Fair Work Act 2009*. We seek to amend clause 24.4(b) and (c) of the *Children's Services Award 2010* to ensure that an employee with insufficient annual leave for a shutdown period will be paid their ordinary rate of pay, rather than be directed to take unpaid leave.
9. If the Commission does determine that such a term is permitted, we make the following submissions:
10. The model term in Attachment D does not adequately reflect the protections for employees found in a number of modern awards. Where higher protections currently exist in modern awards, these should be retained, such as:
 - a) The *Cleaning Services Award 2010* limits annual leave shut down to 4 weeks (clause 29.6(d)) and contains a provision that '*where practicable an employee with insufficient or no accrued annual leave will be employed at another of the employer's sites for the period that would otherwise be a period of leave without pay*' (clause 29.6(c)).
 - b) The *Children's Services Award 2010* contains a maximum of 4 weeks on the amount of leave without pay that an employee may be required to take during Christmas vacation (clause 24.4(b)).
 - c) The *Food, Beverage and Tobacco Manufacturing Award 2010* contains limitations on the number of close downs that can occur per year and ensures that any leave taken by an employee as a result of the close down counts as service (clauses 34.11(d) and (e)).
11. Clause XX.XX (h) in Attachment D should be reworded. Clause XX.XX(h) states: '*If a temporary shutdown period includes a day or part-day that is a public holiday and would have been a working day for the employee had the employee not been on leave in accordance with clause XX.XX, the employee is taken not to be on leave on that day or part-day.*' This is

² Our submission dated 15 March 2019 can be accessed on the FWC site for the 4 yearly review of the *Children's Services Award 2010* at <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201818-20-sub-uv-150319.pdf>

ambiguous as the employee would be on *leave* on that day or part-day, but it would be public holiday leave rather than annual leave or leave without pay.

12. Clause XX.XX(h) should be amended to state:

‘If a temporary shutdown period includes a day or part-day that is a public holiday and would have been a working day for the employee had the employee not been on leave in accordance with clause XX.XX, the employee will be paid as provided for in this award and the employee is taken not to be on annual leave or leave without pay on that day or part-day.’

13. In addition, United Voice supports the position expressed by the CFMEU in paragraph [10] of their submission of October 2017 that unpaid leave taken during a shutdown period should count as service.

**United Voice
4 April 2019**