



**Australian Security Industry
Association Limited**

*The peak body for
security professionals*

**IN THE FAIR WORK COMMISSION - Matter No: AM2018/27
Application to Vary the Security Services Industry Award
2010 – Submissions in reply to individual submissions of
Gavin 26 July 2019.**

20 August 2019

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*



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1. Directions re Matter No. 2018/27an application to vary the Security Services Industry Award 2010 (Award).

- 1.1 ASIAL refers to the Directions of Deputy President Bull, issued 8 July 2019 requiring “any party opposed to the application is required to file with the Commission any submissions in response to the application by no later than 4.00pm on Friday 20 August 2019”.

2. Introduction and Background

- 2.1 The application has been made arising out of a dispute between an individual employee and his employer regarding the wearing of shoes.
- 2.2 The employee contends that the shoes should be regarded as part of a uniform and therefore should be either provided by the employer or the cost of providing the shoes reimbursed by the employer.
- 2.3 The employer has argued that the shoes do not constitute part of the uniform and is therefore not obliged to provide the shoes or reimburse the employee for the cost.
- 2.4 A variation to the award is not, in ASIAL’s submission neither appropriate as a resolution to this dispute, nor is it necessary to affect other employers and/or employees.
- 2.5 During the 4 yearly review of Modern Awards no question has been raised about the definitions of Uniforms, indicating that it has not been a contentious matter since the making of the Award.
- 2.6 ASIAL opposes the proposed variation to the Award.

3. History of Uniform Clause

- 3.1 The making of the Security Services Industry Award 2010 was extensively based on the condition and rates of pay in the pre-reform Security Employees (New South Wales Award 1998).
- 3.2 In S0609 Dec 775/97 S Print P2537

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

s.113 application to vary award

Australian Liquor, Hospitality and Miscellaneous Workers Union

(C No. 22578 of 1996)

SECURITY INDUSTRY (NEW SOUTH WALES) AWARD 1994

(ODN C No. 21023 of 1993)

[Print L7812 [S0609]]

Security officers Security services industry

Wages and conditions of employment

Her Honour made the following comment

*I have earlier dealt with proposed clause 8 - Contract of employment and the issue of probationary employment which was a contested matter. The remainder of this clause was not contentious and will be granted. I note that an addition will be made to subclause 8.2.2 to deal with the forfeiture of a weeks pay by an employee when no notice of termination is given by that employee. Proposed clause 8.3.6 will provide that where an employer requires an employee **to wear a uniform that is to be supplied at no cost to the employee. An additional provision concerning "black shoes" will also be made.**(ASIAL emphasis)*

3.3 The above arose out of an application by the Australian Liquor, Hospitality and Miscellaneous Workers Union to vary that award by including payment of allowances including, torch, uniform and first aid into the rate of pay for all purposes of the award.

3.4 Later Commissioner Wilks in AP796356 – Security Industry (New South Wales) Award 1999 consolidated award incorporates all amendments up to and including 1 October 2008 (variation PR983533).

3.5 **In that version of the Security Employees NSW Award 1998 (the pre-reform award on which the current Award is based) the following clause relating to Uniforms states:**

12.2 Uniforms

Where an employer requires as employee to wear a uniform, the employer must reimburse the employee for the cost of such uniform. This clause does not apply if the employer elects to provide the uniform at no cost to the employee. **Employees will be required to provide their own black shoes.** (ASIAL emphasis).

3.6 Uniforms are considered by the Australian Tax Office as clothing which is unique and has been designed and made only for the employer. It is distinctive if it has the employer's logo permanently attached and the clothing is not available to the public. According to the ATO shoes, socks and stockings do not form part of a non-compulsory work uniform.

4. Security Services Industry Award 2010. (Award).

4.1 The current Award, in ASIAL's opinion is clear and unambiguous. At Clause 15.11 Other matters

(b) Uniform

Where an employee is required to wear a uniform the employer must provide the employee with the uniform or reimburse the employee for the cost of the uniform.

4.2 What constitutes a "uniform" has not included black shoes since at least 1997.

4.3 There is ample opportunity for the applicant to seek a remedy either through the Fair Work Ombudsman or by notification of a dispute in the Fair Work Commission.

4.4 A variation to the award affecting thousands of employers and employees throughout Australia covered by the Award would create undue regulatory burden on the industry.

5. Impact on Employers

- 5.1 The private security industry employee over 150,000 employees throughout Australia.
- 5.2 85% of employers are Small to Medium Enterprises
- 5.3 The cost to employers of providing footwear to employees throughout the private security industry could be in the vicinity of \$15 million and is in our submission contrary to the Modern Award objective in so far as the variation sought would have a significant extra cost of employment and a significant impact on business.
- 5.4 ASIAL submits that Award as it stands properly reflects the intention of the parties in the making and drafting of the Modern Award.

6. Submission of United Voice

- 6.1 ASIAL will deal with each point raised by United Voice (UV) from point 6 in turn.
- 6.2 UV 6. There is no definition of uniform within the Award. ASIAL submits that there is good reason for there being no definition of uniform. The security industry is extremely diverse. Security Officers work in a wide variety of environments, inside buildings, in all weather conditions and in highly formal setting requiring formal attire and exceptionally casual situations which may only require jeans and a T Shirt. It would be impossible and entirely unnecessary to define what elements constitute a uniform. That is precisely why the award clause (as it does in many other modern awards) put the emphasis on the requirements of the employer to provide the "uniform" or reimburse the employee for providing it.
- 6.3 UV 7. ASIAL rejects the variations sought by Mr. Gavin and supported by United Voice for the reasons given in these submissions.
- 6.4 UV 8 It is ASIAL's contention that nominating what constitutes a uniform complicates rather than clarifies the circumstances in which an employer must provide the uniform or reimburse the employee. This will lead to more confusion and dispute.
- 6.5 UV 9. ASIAL rejects the proposition that the dispute with the employer supports any variation the Award.
- 6.6 UV 10. United Voice contention that there is general practice in the security industry to provide certain types of clothing is erroneous. As stated above the diversity of clothing worn and or required to be worn is extensive. While a more visible section of the industry may appear to have certain similarities of dress there are many more sectors of the security industry attired very differently.
- 6.7 UV at 11, offers an award history. As stated above ASIAL refers the Commission as constituted to the Security Employee's (New South Wales) Award 1999 for a more complete understanding of the basis for the modern Award.
- 6.8 UV 12 There appears to be constant reference by UV to uniform allowance. The award does not provide for an "allowance". While Uniform appears in the allowance clause, it is under the 15 .11 "Other Matters".
- 6.9 UV 13 Agreed.
- 6.10 UV 14 Agreed.

- 6.11 UV 15. Agreed
- 6.12 UV 16. Rejected There are several provisions within the Modern Award objectives. ASIAL does not accept that it is necessary to vary the award in the manner sought in order to meet any of the modern award objectives.
- 6.13 UV 18. ASIAL accepts that a benchmark exists that the Commission uses to measure low paid.
- 6.14 UV 19 ASIAL does not accept that “low-paid’ has any relevance to this application.
- 6.15 UV 20 ASIAL does not accept either the assertion that all employees are low paid or that all employees are required under the current award provision to pay for their “Non slip safety footwear”. To assert that on the basis of one employee’s complaint is an extreme overstatement.
- 6.16 UV 21nd 22 ASIAL submits that these statements are pure conjecture with no supporting evidence. Not all employees are on foot and not all employees are required or find it necessary to have safety footwear. The current award provision, as in other modern awards puts the onus on employers that require employees to wear a specific uniform to provide it or reimburse the employee for providing it.
- 6.17 UV 23 Accepted – however this does not have any relevance to the application for variation.
- 6.18 UV 24 ASIAL rejects this assertion. The pre-reform award specifically states that an employee should produce their own black shoes. This is no greater burden than faced by any employee in any work place.
- 6.19 UV 25 ASIAL rejects this supposition. There is no evidence to indicate that the change in the Uniform would improve social inclusion for potential or current security officers
- 6.20 UV 26 ASIAL rejects this supposition also. There is no evidence that security officers are required to provide a uniform before commencing work with an employer.
- 6.21 UV 27 Rejected as unsupported by any relevant evidence.
- 6.22 UV 28. If some employers already do this then for those who do not, particularly small businesses who do not require special footwear, it could create significant cost. Overstating the cost to employees and understating the cost to employers is absurd. The current and pre-reform award clauses do not require an employer to provide footwear unless it is part of a uniform the employer requires the employee to wear.
- 6.23 UV 29 On the one hand UV is claiming a potential cost the employee is between \$60 and \$250 (UV 20) and here suggests that it would be minimal for the employer. An industry estimate has been provided at 5.3 – this is not minimal.
- 6.24 UV 30 ASIAL completely rejects this assertion.
- 6.25 UV 31 ASIAL rejects the notion that uniform should be confined by a definition. As stated in 6.6 the diversity of clothing worn and or required to be worn is extensive. 6.2 Security Officers work in a wide variety of environments, inside buildings, in all weather conditions and in highly formal setting requiring formal attire and exceptionally casual situations which may only require jeans and a T Shirt.
- 6.26 UV 32 On the contrary the current award encompasses any item that the employer **requires** the employee to wear. The variation creates ambiguity.

- 6.27 UV 33 Agreed.
- 6.28 UV 34. ASIAL the assertion rejects that the variation is necessary to meet the modern award objectives. On the contrary ASIAL submits that the application will create significant unnecessary costs to employers.
- 6.29 There has been no dispute over what constitutes a uniform under the modern award or for that matter under the earlier Security Employee (New South Wales) Award 1999. United Voice have had since 2014 to bring any ambiguity before the 4 yearly review of Modern Awards and have not done so.

7. Recommendations

- 7.1 As stated earlier ASIAL submits that this application should be dismissed.
- 7.2 Application is not supported by any relevant evidence that a problem of interpretation, ambiguity or inconsistency exists requiring a change to the current award clause.
- 7.3 If the Fair Work Commission is of a mind to consider a variation ASIAL submits that any variation should not be in the form currently proposed in C2019/27 and should reflect clause 12.2 Uniforms, of the Security Employee's (New South Wales) Award 1999

Where an employer requires an employee to wear a uniform, the employer must reimburse the employee for the cost of such uniform. This clause does not apply if the employer elects to provide the uniform at no cost to the employee. Employees will be required to provide their own black shoes.

- 7.4 ASIAL will be pleased to provide further submissions either written or orally should this matter continue.

Chris Delaney



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