

Australian Industry Group

SUBMISSION

Application to vary
Security Services Industry Award 2010
(AM2018/27)

20 August 2019

Ai
GROUP

APPLICATION TO VARY THE SECURITY SERVICES INDUSTRY AWARD 2010 – AM2018/27 – DEFINITION OF A UNIFORM

1. INTRODUCTION

1. These submissions are made by the Australian Industry Group (**Ai Group**) in response to paragraph [1] of the Directions issued by Deputy President Bull on 8 July 2019 (**Directions**) in relation to the application by Christian Gavin to vary the *Security Services Industry Award 2010* (**Security Award**) to define what items make a uniform for the purpose of reimbursement under clause 15.11(b) of the Award.
2. The initial variation application was filed on 8 November 2018 by Mr Gavin who requested at paragraph [2.2] of the application that the Fair Work Commission (**Commission**) vary the Security Award to define what items make a uniform “so that payment of the uniform or parts of the uniform are covered under the award”.
3. At paragraph [2.3] of the application, the applicant specified that the award should define what makes a uniform so that “[I]f an employer requires a specific type of footwear and they include this in their uniform policy or code of dress then this should constitute part of the uniform”.
4. United Voice filed submissions in support of Mr Gavin’s application on 30 July 2019. Three days after United Voice’s submissions were made, an additional witness statement and supporting documents by the applicant were uploaded on the Commission’s website.
5. Included in the supporting documentation filed on 2 August 2019 was a new variation application proposing that existing clause 15.11(b) be deleted and replaced with:

Where an employee is required to wear a uniform including boots or other required footwear, as part of the employer’s uniform policy, code of dress or corporate clothing or otherwise, the employer must provide the employee with those items specified by the employer’s uniform policy, code of dress or corporate clothing or reimburse the employee for the cost of purchasing the items.

A uniform will include but is not limited to shirt or blouse, pants or dress and shoes or boots.

6. For the purposes of these submissions, Ai Group assumes that this is the wording that is sought in these proceedings.
7. This application should be understood in the light of Mr Gavin's own circumstances. The genesis of this matter lies in the applicant's employer declining to reimburse Mr Gavin for the cost of purchasing shoes which were required by the *MSS Employee Standing Instructions*, namely black leather footwear with a non-skid rubber sole.¹ Materials provided in support of the application indicate that the requirement was included as part of the employer's 'dress code'.²
8. Ai Group opposes the variation. The definition sought by the applicant and United Voice would be contrary to the ordinary meaning of a 'uniform' as commonly understood in industry if it were to include items generally described in an employer's clothing policy or dress code. Unless specified and sufficiently particular to an employer, an item of clothing should not be included within the definition of 'uniform' contained in a modern award.
9. The proposed variation would be inconsistent with a significant proportion of pre-modern awards which defined 'uniform' in a more restrictive manner than that sought by the applicant.

2. DEFINITION OF 'UNIFORM'

10. The definition provided by the applicant for a 'uniform' under the Security Award would be contrary to the ordinary meaning of 'uniform' as usually understood in general parlance. The proposed variation would, if intended to reflect its current meaning, run counter to the observations of French J who made the following

¹ AM2018/27, Christian Gavin – Supporting Materials, *Email from Williamtown Manager to Christian Gavin dated 17 October 2018*.

² AM2018/27, Christian Gavin – Supporting Materials, *Email from MSS Security to Christian Gavin dated 2 November 2018*.

statement in *City of Wanneroo v Australian Municipal, Administrative, Clerical and Services Union (Wanneroo)*:³

The construction of an award, like that of a statute, begins with a consideration of the ordinary meaning of its words.

11. The 'ordinary meaning' of the word 'uniform' should not be construed to include guidelines concerning clothing or 'dress codes'. Some assistance in determining the 'ordinary meaning' of the word may be provided by dictionary definitions.

12. The Macquarie Dictionary (online) provides a single definition for the noun form of 'uniform' as follows:

noun – a distinctive dress of uniform style, materials, and colour worn by and identifying all the members of a group or organisation, especially a military body, school, etc.

13. The Oxford Dictionary defines the noun form of uniform as it relates to clothing as follows⁴:

n. uniform – distinctive dress worn by members of same body, e.g. by soldiers, sailors, policemen, nurses, schoolchildren.

14. It is clear from both of these definitions that a hallmark and a consistently defining feature of the word is a requirement for some level of distinction. In order for a style of dress to constitute a 'uniform', it should, in order to accord with common community and industrial understandings of the term, require some distinctive feature which aids in recognition of an employee as part of an organisation.

15. Without this important aspect of the definition, the word would be provided with an inappropriately broad meaning, rendering it less useful in common parlance. To take the specific circumstances of the applicant as an example, if black shoes with non-slip soles were to constitute either a uniform or part of a uniform, this definition would, not only lack any requisite degree of distinction but would

³ [2006] FCA 813, 438 to 439.

⁴ *Concise Oxford Dictionary* (7th ed 1982) p 1172.

allow an extraordinary level of scope to the word, considering the wide number of variations of footwear that could potentially meet this description.

16. It is not unusual for dress-codes to encompass an extraordinarily wide range of topics which pertain loosely to general appearance including facial hair and tattoos. A dress code may be expressed with a high level of generality, requiring no more than that an employee ensure that they dress 'smart-casual' or wear ordinary business attire. It would be highly inappropriate were the definition of uniform be interpreted to require an employer to purchase an employee's business suit if such were not already possessed by an employee.
17. It is also not unusual for an employer's dress code to include aspects that address health and safety matters, e.g. no loose jewellery when operating machinery, a hat when working in the sun, non-slip leather shoes or steel capped boots. These requirements of a dress code do not make the relevant items a "uniform".
18. Some assistance in determining the commonly understood meaning of the term 'uniform' is provided by the Approved Occupational Clothing Guidelines which are made under Division 34 of the *Income Tax Assessment Act 1997 (ITAA)*. Division 34 of the ITAA concerns deductions for the costs of non-compulsory uniforms. Section 34-15 of the ITAA provides that a 'uniform' is (emphasis added):

one or more items of clothing (including accessories) which, when considered as a set, **distinctively identify you** as a person associated (directly or indirectly) with:

 - (a) your employer; or
 - (b) a group consisting of your employer and one or more of your employer's associates.
19. The definition of 'uniform' for the purposes of the ITAA is supportive of Ai Group's proposition that there is a requirement for distinctive identification.
20. Importantly, considering the matter which gave rise to the application, 'protective clothing' is treated separately under the ITAA as Division 34 does

not prevent deduction of expenditure incurred in respect of ‘occupation specific clothing’ or ‘protective clothing’.⁵ It is appropriate for any proposed definition of a ‘uniform’ for the purposes of a modern award to recognise the distinct treatment that is given to personal protective equipment under the model WHS laws. As such, any definition of a ‘uniform’ should exclude ‘personal protective equipment’.

21. The prospect of the word ‘uniform’ encompassing a ‘dress code’ would effectively divorce the necessary connection this word has to the notion of some signifier of distinctiveness. This common-sense requirement appears to have informed Justice Jessup’s interpretation of a clause providing for a ‘uniform and laundry allowance’ in *Australian Nursing Federation v Eastern Health (ANF v Eastern Health)*.⁶
22. Considering a contention by the applicant in that case that the provision of the allowance was not contingent upon the respondent requiring its employees to wear a particular type or style of uniform, Jessup J interpreted the definition of ‘uniform’ for the purpose of the enterprise agreement that was the subject of those proceedings and said:⁷

I do not think that the attendance of nurses at work unclad was ever in contemplation as the alternative to wearing the apparel required by the employer.

...

I would think it unlikely that the framers of the provision in the Victorian determinations, or of the provisions in any of the more recent industrial instruments, had it in mind that an employer would provide a set of ordinary street clothes. What was in contemplation, in my opinion, was the provision of apparel suitable to the work of nurses in a well organised institution.

23. In *ANF v Eastern Health*, the applicant also made submissions that the respondent’s dress code amounted to a requirement as to apparel sufficient to invoke the definition of ‘uniform’.⁸ Jessup J drew a distinction between a

⁵ *Income Tax Assessment Act 1997* (Cth) s 34-10(3).

⁶ [2013] FCA 548.

⁷ [2013] FCA 548, [22], [23].

⁸ *Ibid*, [24].

“uniform” under the enterprise agreement and requirements which provide a “genuine, realistic, option” as to the apparel an employee wears.⁹

24. Ordinarily, a dress-code or clothing policy will provide employees with ‘genuine, realistic options’ as to the style of clothing worn.
25. Any definition of ‘uniform’ which is inserted into the Security Award should not encompass ordinary clothing, such as ‘black shoes’, which is not impractical or otherwise unsuitable for use outside of work. It is implicit in the requirement to wear a uniform which is ‘distinctive’ that such clothing would, in some manner, pertain to the employer’s enterprise. It is reasonable to assume that an employee would possess generic clothing which is commonly worn outside of work. To include such apparel within the definition of ‘uniform’, such as to require an employer to reimburse an employee for its purchase, would be unfair to employers and inappropriate.

3. INCONSISTENCY WITH OTHER AWARDS

26. The Commission should exercise particular caution in deviating the definition of ‘uniform’ in the Security Award from its ordinary meaning as such a variation could potentially introduce further inconsistency with the entitlements afforded to security personnel engaged under other modern awards.
27. The Security Award does not have occupational coverage. It is an industry award. That this is the case is reflected in the fact that a significant number of modern awards contain classifications for security personnel. The coverage of the award, at the most general level, is outlined at clause 4.1 of the award which states:

This industry award covers employers throughout Australia in the security services industry and their employees in the classifications listed in Schedule C—Classifications to the exclusion of any other modern award.

28. Clause 4.2 provides a list of activities that may fall under the definition of the ‘security industry’. The award assumes that employers in other industries will

⁹ Ibid, [29].

engage personnel under another modern award who perform such operations.

Clause 4.3 states:

To avoid doubt, this award does not apply to an employer merely because that employer, as an incidental part of a business that is covered by another modern award, has employees who perform functions referred to in clause 4.2.

29. In the course of the Part 10A Award Modernisation Process, the Full Bench of the Australian Industrial Relations Commission (**AIRC**) was not persuaded to give the award occupational operation.¹⁰ The Commission acknowledged that a number of other awards in the process of being made at the same time contained classifications for security work.¹¹ The importance of the terms and conditions of a single occupation maintaining a degree of consistency across industry awards was recognised by the AIRC which stated:

We recognise that a number of the priority awards we have made contain classifications for security work and that a number of those classifications have wage rates lower than equivalent classifications in the award we have made for the security services industry. This disparity has existed in a number of states and territories for a long period. We note the submissions of the Minister, which other parties have supported, that where the Commission includes the same occupation in more than one industry award, it is desirable that, so far as practicable, the terms and conditions for that occupation are consistent across the relevant industry awards. We agree that this is desirable.

30. If the applicant's proposed definition of 'uniform' were included in the Security Award, this would alter the meaning of the term, and by extension, the relevant allowances and reimbursements, payment for which are contingent on this definition, in such a way as to introduce greater dissimilarity between the entitlements afforded to security personnel across industries. Increasing the disparity in the conditions available to security employees between industry awards would be contrary to the stated intention of the AIRC as reflected in the above extract. Increasing inconsistency between the conditions available to security employees across different industries would lead to unfairness where the level of skill and responsibility for such classifications are similar and would increase the complexity of the modern award system, inconsistent with the

¹⁰ [2008] AIRCFB 1000, [289].

¹¹ Ibid.

need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards.

31. Ai Group notes that a large number of modern awards other than the Security Award explicitly provide for the engagement of security personnel. Of these, a significant number include provisions which relate to requirements for special clothing to be worn. Whilst each of the following awards include the word 'uniform', none of these define the term for the purposes of the Award:

- *Airport Employees Award 2010*
- *Amusement, Events and Recreation Award 2010*
- *Corrections and Detention (Private Sector) Award 2010*
- *Educational Services (Post-Secondary Education) Award 2010*
- *Educational Services (Schools) General Staff Award 2010*
- *General Retail Industry Award 2010*
- *Health Professionals and Support Services Award 2010*
- *Higher Education Industry-General Staff-Award 2010*
- *Hospitality Industry (General) Award 2010*
- *Storage Services and Wholesale Award 2010*
- *Transport (Cash in Transit) Award 2010*
- *Vehicle Manufacturing, Repair, Services and Retail Award 2010*

32. Without addressing any award-specific features that may significantly impact the meaning of the term, Ai Group surmises that it would not be unreasonable to suggest that by altering the definition of 'uniform' in the Security Award to divorce the word from its ordinary meaning would serve to create a greater degree of disparity between this award and those listed above.

33. A significant number of the abovementioned awards use the word ‘uniform’ in such a way that reinforces the importance of some level of distinction in the clothing worn in order to meet the definition. The *Airport Employees Award 2010*, *General Retail Industry Award 2010*, *Hospitality Industry (General) Award 2010*, *Storage Services and Wholesale Award 2010*, *Transport (Cash in Transit) Award 2010* and *Vehicle Manufacturing, Repair, Services and Retail Award 2010* each refer to a uniform as a ‘special’ category of clothing. The specialised nature of a uniform required under these awards is consistent with the ordinary meaning of the word which imports the notion of a uniform functioning as a ‘distinctive identifier’ of an employee as part of a specific enterprise.¹²
34. The normal conception of a uniform as clothing which identifies an employee as part of the employer’s enterprise is implicit in the entitlement to reimbursement for the cost of a “corporate uniform” in clause 15.2 of the *Corrections and Detention (Private Sector) Award 2010*. It would be incongruous to introduce a wide definition of ‘uniform’ into the Security Award which disconnects the meaning of the term from distinctive apparel associated with the employer’s enterprise.

4. AWARD MODERNISATION PROCEEDINGS

35. The definition of ‘uniform’ proposed by the Applicant would be inconsistent with the balance struck by the AIRC in the process of creating the Security Award consistently with the requirement to include terms only to the extent necessary to provide a fair minimum safety net.¹³ The principle established by the in *the 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues Decision* and affirmed by the Full Bench in the *Penalty Rates Decision* that the Commission will proceed on the basis that prima facie the modern award being reviewed achieved the modern awards objective at the time it was made is

¹² *Airport Employees Award 2010* cl. 21.3; *General Retail Industry Award 2010* cl. 20.2; *Hospitality Industry (General) Award 2010* cl. 21.1; *Storage Services and Wholesale Award 2010* cl. 16.5(b); *Transport (Cash in Transit) Award 2010* cl. 16.2(b); *Vehicle Manufacturing, Repair, Services and Retail Award 2010* cl. 23.8.

¹³ *Workplace Relations Act 1996* (Cth) s 567L.

apposite in the present proceedings.¹⁴ The principle has since been applied in a recent application to vary the *Corrections and Detention (Private Sector) Award 2010* outside of the 4 yearly review of modern awards.¹⁵

36. The wage rates included in the Security Award were drawn from the *Security Industry (New South Wales) Award 1999*.¹⁶ The structure of wages and conditions established by the AIRC in the course of making the Security Award clearly took into account the allowances afforded to employees engaged under the NSW pre-reform award. The AIRC explicitly rejected a proposal by the Liquor, Hospitality and Miscellaneous Union (**LHMU**) to include a laundry allowance at higher rates considering the relatively high wage rates adopted and the history of the NSW pre-reform award from which they were drawn.¹⁷ The fact that the higher rates of pay in the NSW pre-reform award were utilised also justified the decision of the AIRC to reduce the penalty rates in the exposure draft of the Security Award for the “Night Span” to the rate specified in the NSW pre-reform award.
37. The *Security Industry (New South Wales) Award 1999* provided at cl. 12.2 (emphasis added):

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.

38. The exclusion of ‘black shoes’ from the categories of ‘uniform’ which enlivened the requirement to reimburse an employee is supportive of a restrictive interpretation of the word in the Security Award such that would not extend to ordinary clothing that an employer could ordinarily expect an employee to possess. This provision, which was acknowledged at paragraph [14] of United

¹⁴ [2014] FWCFB 1788 at [19]-[24], [2017] FWCFB 1001, [111].

¹⁵ Application by Chapman [2019] FWC 4415, [19].

¹⁶ [2008] AIRCFB 1000, [295], [297].

¹⁷ *Ibid*, [295].

Voice's submissions, is also pertinent considering the context under which the present proceedings have arisen.

39. The clear consideration given by the AIRC to the higher rates of pay imported from the NSW pre-reform award in determining the level of remuneration provided in the form of additional rates and allowances, favours a meaning of 'uniform' that would extend no further than that which was applicable under the pre-reform award.
40. This approach is further supported by the more restrictive application of uniform allowances under various other predecessor instruments to the Security Award. These include:
- The requirement for an employee to provide their own black shoes was also present in the *Security Industry (State) Award*, a NAPSA at the time of the Part 10A award modernisation proceedings.¹⁸
 - Clause 10.2 of the *Security Industry (Contractors) Award - State 2004* (Qld) defined a 'uniform issue' as consisting of 2 pairs of trousers, 5 shirts, a cap, and/or tie.¹⁹
 - Clause 10.2 of the *Security Officers' Award* (SA) divided the definition of a 'uniform' into a mandatory basic issue (consisting of an agreed combination of trousers, shorts, shirts, tie), and an optional issue (comprising any number of uniform jacket, wet weather coat, jumper, parka, and any other item as agreed to by the employer, employee and the Union) which may be provided upon the request of the employee.
41. The application of a consistent approach with the treatment of uniforms under relevant pre-reform instruments requires an interpretation of a uniform that does not extend to dress codes imposed by an employer where these do not

¹⁸ AN120497, cl. 12.2.

¹⁹ AN140269, cl. 10.2.

mandate specific clothing which distinguishes an employee as part of the employer's enterprise.

42. The definition proposed by the applicant would be excessively broad considering the limits placed on the definition under the pre-reform NSW Award from which the minimum rates of pay were originally derived. The approach argued for by the applicant and United Voice would disturb the existing balance between the wages and conditions afforded to employees under the Security Award as determined by the AIRC.

5. MODERN AWARDS OBJECTIVE

43. The FW Act sets a significant hurdle on substantial award variations.
44. Section 157 of the Act provides that the FWC may vary an award if it is satisfied that making the variation is necessary to satisfy the modern awards objective.
45. The requirements of s.138 must also be met.
46. In the *4 Yearly Review - Preliminary Jurisdictional Issues Decision*, the Full Bench identified the following relevant considerations regarding s.138, which are equally relevant to applications pursued outside of the 4 Yearly Review (emphasis added)²⁰:

... Relevantly, s.138 provides that such terms only be included in a modern award 'to the extent necessary to achieve the modern awards objective'. To comply with s.138 the formulation of terms which must be included in modern award or terms which are permitted to be included in modern awards must be in terms 'necessary to achieve the modern awards objective'. What is 'necessary' in a particular case is a value judgment based on an assessment of the considerations in s.134(1)(a) to (h), having regard to the submissions and evidence directed to those considerations...

47. The following frequently cited passage from Justice Tracey's decision in *Shop, Distributive and Allied Employees Association v National Retail Association (No 2)*²¹ was adopted by the Full Bench in the above decision:

²⁰ *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788 at [36].

²¹ [2012] FCA 480.

“... a distinction must be drawn between that which is necessary and that which is desirable. That which is necessary must be done. That which is desirable does not carry the same imperative for action.”

48. As to the threshold which must usually be met for the purposes of making a sufficient case in support of a proposed variation, the Full Bench of the Commission said in *Re Security Industry Award* (emphasis added)²²:

Variations to awards have rarely been made merely on the basis of bare requests or strongly contested submissions. In order to found a case for an award variation it is usually necessary to advance detailed evidence of the operation of the award, the impact of the current provisions on employers and employees covered by it and the likely impact of the proposed changes. Such evidence should be combined with sound and balanced reasoning supporting a change.

49. Neither the Applicant nor United Voice have provided sufficient materials for the Commission to be satisfied that the proposed variation is necessary to achieve the modern awards objective. The additional materials filed in support of the Applicant’s proposed variation relates only to the circumstances he has encountered with his own employer and relate to his employer’s ‘Standing Instructions’ relating to styles of dress which have been significantly redacted on the Commission’s website.
50. The insertion of the Applicant’s proposed definition of ‘uniform’ in the Security Award would be inconsistent with the modern awards objective and are not “necessary” for the Award to achieve the modern awards objective.
51. In exercising its modern award powers, the Commission must ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions, taking into account each of the matters listed at ss.134(1)(a) – (h) of the Act.
52. In the *4 Yearly Review of Modern Awards – Penalty Rates Decision*,²³ the Full Bench made the observation about the proper construction of the expression

²² [2015] FWCFB 620 at [8].

²³ [2017] FWCFB 1001.

“fair and relevant minimum safety net of terms and conditions” in s.134 of the Act:

Fairness in this context is to be assessed from the perspective of the employees and the employers covered by the modern award in question”.²⁴

53. It is not fair to require an employer to reimburse an employee for clothing which it may reasonably be expected that an employee possesses. It is also unfair for an employer to be expected to reimburse an employee for clothing purchased in conformance with a reasonable dress code.
54. In making any amendments to a modern award, the Commission is required to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions, taking into account the considerations in s.134(1)(a) to (h).
55. As stated in the *Penalty Rates Decision*, no particular primacy is attached to any of the s.134 considerations and not all of the matters identified will necessarily be relevant in the context of a particular proposal to vary a modern award:²⁵

“The Commission’s task is to take into account the various considerations and ensure that the modern award provides a ‘fair and relevant minimum safety net’”.

Paragraph 134(1)(a) – Relative living standards and needs of the low paid

56. This is a neutral consideration in this matter.

Paragraph 134(1)(b) – The need to encourage collective bargaining

57. This is a neutral consideration in this matter.

²⁴ [2017] FWCFB 1001, [117] – [119].

²⁵ [2017] FWCFB 1001, [115], [116] and [196].

Paragraph 134(1)(c) – The need to promote social inclusion through increased workforce participation

58. Requiring employers to reimburse staff engaged under the Security Award for each of the items required under an ordinary dress code, including shoes or boots with a non-slip sole, would increase the cost of hiring new employees.
59. Employers in the security industry generally do not have the benefit of wide profit margins. As Commissioner Gregory said in his decision in relation to an application for approval of the *IFS Head Franchise Pty Ltd Enterprise Agreement 2017*²⁶:

I have some understanding about the security industry from previous experience of dealing with agreements in the industry and the exercise of dispute resolution functions. It is clearly a highly competitive industry with wage costs typically representing a significant proportion of business expenditure. ... In addition, some employers in the industry have indicated their concerns about being undercut by businesses that are not necessarily having regard to payment of the appropriate wage rates and other conditions. However, this is not to suggest that the Applicant is involved in any such behaviour.

60. Imposing an obligation to pay for items of clothing which merely conform to a dress code for new and existing employees would act as a disincentive to the engagement of new staff. As such, the consideration mandated by s 134(1)(c) of the FW Act weighs against making the variation proposed by the Applicant.

Paragraph 134(1)(d) – The need to promote flexible modern work practices and the efficient and productive performance of work

61. This is a neutral consideration in this matter.

Paragraph 134(1)(da) – The need to provide additional remuneration

62. This is a neutral consideration in this matter.

²⁶ [2019] FWC 4706, [25].

Paragraph 134(1)(e) – The principle of equal remuneration for work of equal or comparable value

63. This is a neutral consideration in this matter.

Paragraph 134(1)(f) – The likely impact on business including productivity, employment costs and the regulatory burden

64. The proposed variation would negatively impact employment costs and increase the regulatory burden. By including within the definition of ‘uniform’ any clothing that is part of the employer’s code of dress, the list of items for which an employer is responsible would be considerably extended.

65. The proposed definition would extend the definition of ‘uniform’ to articles of clothing which it would ordinarily be assumed that an employee possesses.

66. The increased costs would apply in respect of new as well as existing employees and result in a significant burden on employers who are currently reimbursing employees only for those items that are within the ‘ordinary definition’ of uniform, namely those required articles of clothing which are a distinctive signifier of the employer’s enterprise.

67. In addition to the direct costs involved, there would be an increased regulatory burden as employers would need to review existing employment contracts, policies and procedures.

68. There would also be additional costs associated with the likelihood that the number of disputes over clothing and uniforms would increase.

69. These impacts weigh heavily against the Commission finding that the amendment is consistent with the modern awards objective.

Paragraph 134(1)(g) – The need to ensure a simple, easy to understand, stable and sustainable modern award system that avoids unnecessary overlap of modern awards

70. The proposed definition of ‘uniform’ imports nebulous terms, the meaning of which are likely to differ depending on the enterprise i.e. ‘code of dress’ and ‘corporate clothing’. Such terms are undefined in the proposed clause, however, it may be supposed that the intent would be to impose a wide definition considering the emphasised portion of the following wording:

Where an employee is required to wear a uniform including boots or other required footwear, as part of the employer’s uniform policy, code of dress or corporate clothing or otherwise...

71. Such a broad definition of ‘uniform’ not only divorces the term from of its ‘ordinary meaning’ but extends it potentially to all clothing denoted under a code of dress. Considering the broad range of items which are likely to be covered by the term ‘code of dress’, the boundaries of the definition are not clear. The following words also expand the definition:

A uniform will include but is not limited to shirt or blouse, pants or dress and shoes or boots.

72. The extended definition proposed for ‘uniform’, the limits of which are left open, would cause significant uncertainty as to the obligation imposed on an employer to reimburse or pay for various articles of clothing.
73. Accordingly, the proposed variation is inconsistent with the need to provide a simple and easy to understand modern award system.

6. CONCLUSION

74. The variation proposed to clause 15.11 of the Security Award should be rejected by the Commission, for the reasons outlined in these submissions.
75. The variation is not consistent with the modern awards objective or necessary to achieve the objective.