

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission

Plain Language Re-Drafting –
Cleaning Services Award 2010
(AM2016/15)

12 October 2017

Ai
GROUP

4 YEARLY REVIEW OF MODERN AWARDS
AM2016/15 PLAIN LANGUAGE RE-DRAFTING
CLEANING SERVICES AWARD 2010
(AM2016/15)

1. INTRODUCTION

1. This submission responds to the directions issued by the Commission on 19 September 2017 regarding the plain language re-drafting of the *Cleaning Services Award 2010*.
2. The parties were directed to file submissions on the *Plain Language Exposure Draft – Cleaning Services Award 2010*, as published by the Commission on 8 September 2017 (**Cleaning Exposure Draft**).
3. Section 2 of this submission identifies various issues of concern relating to the *Cleaning Exposure Draft*. These submissions do not address those award clauses that are being dealt with in the Commission proceedings relating to the plain language re-drafting of standard award clauses.
4. In addition, Ai Group has filed very lengthy submissions highlighting numerous problems relating to the plain language re-draft of the *Clerks – Private Sector Award 2010*. To the extent that the *Cleaning Exposure Draft* contains similar clauses, our submissions on the *Clerks Award* have relevance.

2. CLEANING EXPOSURE DRAFT

Clause 9 – Full-time employee

5. The redrafted clause 9 states:

9. Full-time employment

An employee who is engaged to work an average of 38 ordinary hours per week in accordance with an agreed hours of work arrangement is a full-time employee.

NOTE: The hours of work arrangement is agreed between the employer and the employee. See clause 13—Ordinary hours of work and rostering.

6. The redrafted clause requires that a full-time employee work under an **agreed** hours of work arrangement in all circumstances. This is not a requirement of the current Award and is not appropriate. The current award gives the employer the right to set the hours of work within defined boundaries, with additional flexibility available by agreement.
7. Also, the above wording does take account of the fact that many casual employees would work 38 hours in some weeks, even if they work irregularly overall, and should not be deemed to be full-time employees.

Clause 12 - Classifications

8. The redrafted clause requires that an employer classify all employees in accordance with the definitions in Schedule A. This is not a requirement of the current award. It is very common for employers to use in-house job titles rather than the award classification definitions. It is not appropriate to force employers to use the classification definitions in the Award. The Award is a safety net. The redrafted clause 12 is too prescriptive.

Clause 13.1 – Ordinary hours and roster cycles – full-time employees

9. The redrafted clause requires that a full-time employee work under an **agreed** hours of work arrangement in all circumstances. This is not a requirement of the current Award and is not appropriate. The current award gives the employer the right to set the hours of work within defined boundaries, with additional flexibility available by agreement.

Clause 13.6 - Rostering

10. The clause cross-reference in paragraph (d) should be “31”, not “0-31”.

Clause 14.1 and 14.2 - Breaks

11. Clause 14.1(c) substantially expands the circumstances in which shiftworkers are entitled to a 10 minute paid rest break. The entitlements should only apply to full-time shiftworkers who work a straight shift. (See existing clause 26.1). The entitlements should not apply to part-time or casual shiftworkers.
12. Also, part-time and casual shift workers should not be entitled to the paid rest breaks in clause 14.2(c). See existing clause 26.2.

Clause 14.4 - Breaks

13. Clause 14.4 has a wider effect than existing clause 26.3(a). The clause should be amended as follows to reflect the existing entitlement:

If the employer requires an employee to ~~continue or~~ resume work without the employee being allowed to ~~take, or to complete,~~ a rostered meal break, the employer must pay the employee at the overtime rate mentioned in clause 23.2— Overtime rates until the employee is allowed to ~~take or~~ resume the meal break or the shift ends.

Clause 15 – Work organisation

14. Clause 15 should be amended as follows to avoid any doubt about the meaning of the word “streams”:

An employer may require an employee to perform duties across the different classifications ~~streams~~ set out in Schedule A— Classification Definitions that they are competent to perform.

Clause 18.3 – Payment of wages

15. The following amendment should be made to clause 18.3 to ensure consistency with the current award. The wording in the Exposure Draft would most likely lead to numerous disputes over bank fees associated with an employee’s savings account:

Wages may be paid, ~~without cost to the employee,~~ by cash or electronic funds transfer into a bank account nominated by the employee. However, the employer and an employee may agree that wages ~~must~~ be paid by cash.

Clause 21 - Allowances

16. To reflect existing entitlements, the word “continuously” should be inserted after the word “works” in clauses 21.3(b) and clause 21.4(c).
17. The following amendment should be made to clause 21.8(a) to reflect the existing entitlements and to improve clarity:

Clause 21.8 applies to an employee who is principally employed for the major portion of their time on any shift to:

18. The following amendment should be made to clause 21.9 to reflect the existing entitlements and to improve clarity:

The employer of an employee who is principally employed for the major portion of ~~on~~ any day or shift to clean toilets must pay the employee a toilet cleaning allowance of \$2.66 per shift or \$13.11 per week.

19. In clause 21.11, the words “with the employer” need to be inserted after the words “by agreement”, to reflect the existing entitlements and to improve clarity.

Clause 23.2 – Overtime

20. In clause 23.2(b), the reference to “Table 6 – Penalty Rates” should be replaced with “Table 5 – Overtime Rates”

Clause 23.5 – Call back

21. The following amendment needs to be made to clarify that the employee cannot choose to leave before the job is completed and still be entitled to payment:
- (b) The employer must pay the employee for a minimum of 2 hours at the overtime rate even if the employee is required by the employer to work for a shorter time.

Clause 23.6 – Call back for non-cleaning purposes

22. The following amendment needs to be made to clause 23.6(c) to reflect the existing entitlements:
- (c) The employer must pay the employee at the rate of pay otherwise applicable (including overtime and penalty rates) and for the minimum number of hours specified in paragraph 23.6(d):
 - (d) The rate of pay and minimum number of hours is:
 - (i) 2 hours at the ordinary hourly rate plus any applicable shift penalty, if attendance is required on a Monday to Friday; and
 - (ii) 3 hours at the appropriate Saturday rate, if attendance is required on a Saturday; and
 - (iii) 4 hours at the appropriate Sunday rate, if attendance is required on a Sunday.

Clause 25.3 – Payment for annual leave

23. Clause 25.3(c) needs to be amended. The award currently requires that a 17.5 per cent loading be paid on annual leave on termination of employment; not any higher shift loading etc. See existing clause 29.7.

Clause 25.4 – Temporary close-down

24. Clause 25.4 contains numerous major differences to the existing entitlements and obligations.
25. No attempt appears to have been made in the drafting to reflect the current entitlements and obligations.
26. The existing wording in clause 29.6 should be retained.

Clause 32 – Consultation about change of contract

27. The following amendment should be made to clause 32.5 to avoid inconsistency with the current award and to avoid uncertainty about the meaning of the phrase “*the shifts that they worked*”. This phrase could be interpreted in a manner that imposes a very onerous burden upon employers:

- 32.5 The employer must give a written notice to any employee who is not offered suitable alternative employment with the employer that:
- (a) gives details of the employee’s accrued statutory and award entitlements on termination of the employee’s employment (including accrued annual leave); and
 - (b) contains a statement of the employee’s service with the employer (including the length of that service, their hours of work, their classification and ~~the shifts they worked~~ shift configuration); and
 - (c) invites the employee to notify the employer if they consent to the employer giving their name to the incoming contractor so that they may be considered for employment with that contractor.

28. Also, clause 32.6 should be deleted as this is not a current obligation under the Award.

Clause 39.1 - Redundancy

29. The following errors need to be corrected in clause 39.1:

Clause 39 applies to the contractor who provides ~~cleaning security~~ services to a particular client being changed from one ~~cleaning security~~ contractor (the outgoing contractor) to another (the incoming contractor). It applies in addition to clause 30—Consultation about major workplace change of this award and section 120(1)(b)(i) of the Act.