



**Australian Security Industry
Association Limited**

*The peak body for
security professionals.*

FAIR WORK COMMISSION Matter No. AM2016/15, AM2014/89

**Four Yearly Review of Modern Awards – Plain Language
Exposure Draft – Security Services Industry Award 2017**

*Supporting members, promoting standards
and safeguarding public interest*



ASIAL welcomes the opportunity afforded it by the President of the Fair Work Commission on 19 September 2017 in matter(s) No. AM2016/15, AM2014/89 where interested parties were directed to file in the Commission, written submissions re the Plain Language Exposure Draft, (the 2017 Draft) on or before 5.00pm, Friday 6 October 2017 to amod@fwc.gov.au.

After consultation with members and in accordance with the directions, ASIAL makes the following submissions:

1. Clause 2.2 of the *Security Services Award 2010* (the Award), is not included in the 2017 Draft. “2.2 *The monetary obligations imposed on employers by this award may be absorbed into overaward payments. Nothing in this award requires an employer to maintain or increase any overaward payment*”. ASIAL is instructed to submit that it be retained be retained.
2. Coverage – ASIAL notes that the term “*control room*” has been omitted from clause 4.2(d). For clarification, a “*control room*” is separate and distinct from a monitoring station/central station. A control room may be collocated at the client’s premises while a monitoring station/central station. has the definition contained in the Award. For clarity ASIAL submits that the words “*control room*” should be reinstated in the coverage clause to read: ‘(d) *the operation of a security control room or central station*’.
3. The definition of ‘*default employee*’ has not included in the 2017 Draft. ASIAL submits that it should be retained: ‘**default fund employee** means an employee who has no chosen fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992 (Cth)*’
4. For clarity the following definition of a shift worker should be included in the Definitions clause of the 2017 Draft:
‘*For the purpose of the NES, a shiftworker is an employee:*

 (a) *who works a roster and who, over the roster cycle, may be rostered to work ordinary shifts on any of the seven days of the week; and*

 (b) *who is regularly rostered to work on Sundays and public holidays*’.
5. Clause 4.2 (c) should include the words ‘*or control room*’;
6. Clause 6.4 (a) ASIAL submits that this should be changed to ‘*give the employee the proposed agreement*’.
7. Clause 6.8 of the 2017 Draft appears to make the incorrect reference to 6.9 (b), which does not exist. ASIAL believes that the reference should be to ‘6.7(b)’.
8. Clause 10.3 should make reference to pro rata entitlements. ASIAL suggests that the clause should read: ‘*This award applies to a part-time employee, **on a pro-rata basis**, in the same way that it applies to a full time employee except as otherwise expressly provided by this award*’. (ASIAL emphasis).
9. Clause(s) 10.5 and 10.6 restrict employers from engaging part time employees on a roster cycle in the same way as would be available to a permanent full time employee. ASIAL submits that this is inconsistent with Clause 10.1 and requires further discussion and clarification.

10. ASIAL submits that Clause 10.9 should reflect the original words from the Award, which more accurately: *'A part-time employee must be paid at the rate of 1/38th of the weekly rate specified in clause xx 'Minimum rates for each ordinary hour worked'.*
11. Clause 12.1 ASIAL submits that this wording in this clause should be changed to *'An employer must pay an employee the rate of pay applicable to the classification in which the employee works'.*
12. Clause 12.3 (d) should retain the words from the Award: ...*'and as a result cannot carry out a security activity'.*
13. Clause 13.3 (c) should reinstate the word *'concerned' or alternatively 'affected'*. ASIAL members have indicated that at some work sites there may be security officers that will work on shorter shifts while a smaller group may be required to work 12 hour shifts. Those on shorter shifts may not need to be involved in discussions re 12 hour arrangements if they are not affected.
14. Clause 13.5 (b) should include the following after the word employees *',' or provide it by electronic means'.*
15. Clause 13.5(c). ASIAL recommends the current award clause 21.12 instead of 13.5(c) of the 2017 Draft:

Display of roster and notice of change of roster

'The employer must notify employees who work their ordinary hours in accordance with a roster of the commencing and ceasing times of their rostered hours of work either by posting the roster on a noticeboard, which is conveniently located at or near the workplace or through electronic means. Such times, once notified, may not be changed without the payment of overtime, or by seven days' notice given in accordance with this clause. However, by agreement between the employer and the employee less than seven days' notice may be substituted'.

16. Clause 13.6 Notice of rosters. ASIAL submits that the Relieving Officer position was created in awards to provide employers with the flexibility to cover absenteeism at short notice without having to resort to overtime or using casuals. The Relieving Officer Allowance was to compensate nominated security officers for not having a roster and being available 'at short notice'. Industry custom and practice is that the notice period can be as little as 2 hours in the case of relieving sick leave provided that the Relieving Officer has had the requisite 8 hour break between shifts. The Award indicates that 24 hours notice should be given *'where possible'*, however in practice this is not often possible.
17. Clause 14.3 restore the word *'operationally'*
18. Clause 14.5 Breaks. ASIAL submits that Clause 21.3 of the Award *'Break between successive shifts'* is more appropriate. Therefore 14.5 should read: *'Each ordinary time shift must be separated from any subsequent ordinary time shift by a minimum break of not less than eight hours'.*
19. For clarity Clause 15.1 Table 4 Minimum rates – In Column 2 should have the heading *'Minimum weekly rates – Full-time Employees'.*

20. Clause 17.2 should include after 'Wednesday' *'or Thursday.'*
21. Currently clause 19 of the Award does not include the words *'without cost to the employee'*. This should be deleted and the original wording restored. For example should a bank or financial institution decide to charge a customer for a service an employer should not have to be responsible for paying the charge. ASIAL recommends the removal of the words in 17.3 *'without cost to the employee'*.
22. Supervision allowance - ASIAL submits that this should also be expressed as a per shift allowance as well as per week. This will provide clarity for those occasions when a casual may perform supervisory duties.
23. Clause 19.6 (b) Relieving Officer Allowance – in practice this appointment is made with short notice to cover sick leave and unplanned longer term leave (See submissions at point 16).
24. Clause 21.3 Overtime – Payment of Overtime - This is inconsistent with other clauses in the award that discuss overtime in terms of before or after a shift. Overtime occurs outside of or in excess of ordinary rostered hours - e.g. *'13.3(f) Shift Duration'* and *'14.5 (a) Breaks between work periods'*.
25. Clause 21.3 (b) should retain the words from the Award i.e.: *'Where a period of overtime commences on one day and continues into the following day, the portion of the period worked on each day attracts the loading applicable to that day.'*
26. Clause 21.3 (c) should read *'Except as provided for in clause 21.3 (b) overtime....any other day'*. *Either that or delete 21.3 (c).*
27. In Clause 21.3 (a) the words *"minimum hourly"* should be deleted and the current award wording reinstated.
28. Clause 22.2 ASIAL suggests the addition of sub clause (d) *'The Casual loading is not included when calculating the overtime rate'*.
29. Clause 21.3 (b) – This is a departure from the current Award clause 23.4 which is clear and provides that overtime is based on the day on which the overtime is worked. ASIAL's view is that the original wording should remain otherwise it may be inconsistent with the object of the 2017 Draft to ensure that *'no employee can take home less pay'*.
30. 22.3 Penalty rates – ASIAL suggests the following rewording : *'An employer must pay an employee as follows for **ordinary** hours worked by the employee during a period, or on a day, specified in column 1 of **Table 7—Penalty rates:**'*
31. Clause 22.3 Error – 6.0 am should be *'6:00am'*
32. Clause 23.2 Annual Leave – Additional paid leave for certain shift workers. ASIAL is concerned that the FWC have omitted essential clauses on this issue. ASIAL submits the following in lieu of the 2017 Draft Clause 23.3(a):

'23.3 Payment for annual leave

Before the start of the employee's annual leave the employer must pay the employee in respect of the period of such leave the greater of:

(a) the amount the employee would have earned during the period of leave for working their normal hours, exclusive of overtime, had they not been on leave; and

(b) the employee's ordinary time rate specified in clause xx.xx together with, where applicable, the leading hand allowance, relieving officer's allowance and first aid allowance prescribed in clause xx.xx respectively, plus a loading of 17.5%.

33. Add Clause 23.10 **Payment of accrued annual leave on termination**

'Where an employee is entitled to a payment on termination of employment as provided in s.90(2) of the Act, the employer must also pay to the employee an amount calculated in accordance with clause xx.xx. The employer must also pay to the employee a loading of 17.5% in accordance with clause xx.xx unless the employee has been dismissed for misconduct.

*In relation to any employee **ordinary pay** means:*

(a) remuneration for the employee's normal weekly number of hours of work calculated at the ordinary time rate of pay; and

(b) where the employee is provided with board or lodging by the employer, ordinary pay includes the cash value of that board or lodging.

For the purpose of the definition of the term ordinary pay in clause XX'

35. Schedule A – Classification Definitions ASIAL comment: The addition of the word(s) 'and' and 'or' are unnecessary and should be revert to the Award wording.

ASIAL will be pleased to discuss and explain these submissions at any future conferences.

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