

Award modernisation

... its impact on 1.1 million clerical/admin workers in the private sector.

The story so far...

Exemption rate slashes protections

1. All award covered clerical and administrative employees earning over \$851 per week have been stripped of nearly all award conditions, including:
 - a. Access to a dispute settling provision dealing with disputes arising under the Award, or the NES – a fundamental right
 - b. Access to a copy of the Award
 - c. The right to consultation about change in the workplace
 - d. All award allowances – including Accident make up pay
 - e. Rest breaks
 - f. All hours of work protections and penalties, including overtime rates, Saturday and Sunday rates, public holidays and shift work allowances.
2. Up to 744,000 employees outside of NSW/ACT are potentially affected depending on earnings and award coverage under modern clerical and finance industry awards.
3. Other award covered employees only lose their award coverage if they accept a guaranteed annual package of \$100,000 [\$1,923 per week]. Why do clerks lose all protections – without choice – at \$44,000? The top rate in the award is \$813 or \$42,276.

Working 9-5 and Saturday mornings, too!

4. Up to 340,000 private sector clerks working in Queensland, SA, Tasmania and the ACT can now be required to work Saturday mornings as part of their ordinary hours of work ***for the first time!***

5. Clerical awards in States and Territories other than the above did not allow clerks to be worked on Saturday mornings unless by agreement – now parents get to go to work not to their children’s sporting or other Saturday activities.

Call centre employees get the wrong numbers...

6. Agreed flexibilities applying to a couple of thousand employees in the **contract call centre industry** have been extended to up to 280,000 employees who might be classified as call centre employees – thus these employees get a reduction in their take home pay and conditions on the weekend.
7. The ASU, other call centre employees and the AiG all asked the AIRC to make a modern contract call centre award based on the existing one which applied to five named employer respondents and which was a common rule Award in Victoria.
8. The AIRC eventually made such an award but extended the weekend flexibilities to all “call centre” employees without defining what a call centre was. Contract call centre employees work in a defined industry but many clerical employees work in what can be called call or contact centres in clerical occupations generally and in the finance industry. In house call centre employees who were previously covered by a general clerical Award have now had their conditions cut and work for lesser terms and conditions than fellow clerical/admin employees.

Guarantee – what guarantee? Read the fine print...

9. The Minister’s award modernisation request says that award modernisation is not intended to disadvantage employees. The Transitional Bill provides for FWA to make take Home Pay Orders where the take home pay of an employee has been reduced as a result of award modernisation. Modern awards may contain transitional provisions for the preservation of State and Territory differentials for up to five years [but not beyond]
10. Sometimes, these provisions are said to constitute the “no disadvantage guarantee” but there is no such thing.
11. The AIRC – even with transitional provisions – is making modern awards which clearly disadvantage whole classes of employees. Take Home Pay Orders are only

available to existing employees at the commencement of modern awards and only where they remain in the same or a comparable position.

12. The ASU has done some calculations based on a transition from the Victorian Clerical and Administrative Employees Award for casual clerks and found that the rate of pay for a casual Grade 2 clerk with 12 months service would fall under the new modern award [because both the rate of pay and the casual loading is lower] by \$2,806 per annum for a casual clerk working 30 hours per week. Such an employee could get a take Home Pay Order – and the ASU will certainly be applying on their behalf.
13. However, if that casual clerk got a promotion on the second of January next year to the next level in the modern clerical award structure, despite the increase in the base rate of pay, the earnings of the employee would fall by \$1390 per week because of the lower casual loading – and this employee – because she is not in the same job – would not be able to get a take Home Pay Order. The ASU confidently expects that many members will get promotions next year, but they won't be thanking the Government for it!

[the calculations are attached]

Clerks private sector award - Impact of modernisation on general conditions

1. For the first time, 340,000 clerical workers in

- South Australia [80,000],
- Tasmania [20,000],
- the ACT [15,000] and
- Queensland [225,000]

can be required by their employers to work on Saturday mornings as part of their ordinary hours of work.

2. The AIRC has determined a loading of 25% for work on Saturday mornings but this will be cold comfort for the mainly women workers covered by this Award who will be forced to work instead of taking their children to Saturday morning sport or other family activities. The inclusion of Saturday work as "ordinary hours" will create the potential for many thousands of workers to be forced to work Saturdays as part of their normal working week in future.

3. The ASU made strong representations to the AIRC regarding a range of disadvantages that clerical employees would face if the terms of the Exposure Draft were confirmed in the final award. The Commission's December 19th decision acknowledged that:

"Extensive submissions were made about the content of the exposure draft for this award. The ASU identified a number of areas of disadvantage for current and future employees."

4. However, little note appears to have been taken of the extensive list of disadvantage if changes were not made to the draft award.

5. A list of the key cuts in terms and conditions for clerical and administrative employees including pay rates includes:

- Saturday morning work as part of ordinary hours and extended Monday to Friday spreads of hours for many workers.
- Cuts in the level of minimum wages paid to clerks: the AIRC used the SA Clerks Award classification structure for the modern award but cut \$18.10 per week (or \$941.20 per annum) from the Level 1 year 1 entry rate of pay without giving any reason or explanation. General clerical rates will now start at \$20 per week or \$1000 per year less than clerks under the general Retail Award.
- Casual loadings for Victorian workers have been cut from 33.3% to 25% - a cut for a casual clerk in Victoria working 30 hours per week of \$45 each week or \$2300 per year.
- No jury service 'make up' pay beyond the level provided in the National Employment Standard despite all clerical awards having vastly superior make up pay provisions.
- Higher redundancy standards for workers under state awards have only been preserved for workers employed when the new modern award commences - new employees will lose this part of their safety net and all employees will lose it after five years.
- Additional parental leave entitlements have been lost.

Effect of exemption rate – protections lost

6. The only award safety net conditions retained by an exempt employee are:
- Redundancy
 - Superannuation;
 - Annual leave;
 - Personal/carer's leave and compassionate leave;
 - Public holidays and
 - Community service leave.

7. Since, with the exception of Superannuation [which is largely a legislative entitlement anyway], all these retained conditions are provided for in the National Employment Standards, employees exempted from the operation of the award by this new exemption provision lose all award benefits [except where the award may supplement the NES in regard to these matters]. These employees will be forced to rely simply on the NES plus any limited award supplementation of NES conditions.
8. The table below shows the award terms and conditions lost by 'exempt' employees.

Award clause	Conditions lost by employees
Access to the Award and the NES	Right of access to a copy of the award and the NES
Consultation regarding major workplace change	Obligation on the employer to notify employees re changes that will have significant effects on employees and obligation on employer to discuss the effects of those changes and measures to avert or minimize those effects.
Dispute resolution	No access to dispute resolution procedures re disputes arising under the award or the NES
Types of employment	No protections for part-time employees including re pro rata entitlements; agreed hours; roster changes; minimum number of consecutive hours. Casual loading. Minimum payment guarantee for casuals.
Termination of employment	Award employment termination provisions in excess of the NES – including job search entitlement.
Allowances	Transport of employees – shiftworkers Clothing and footwear allowance Meal allowance Vehicle allowance Living away from home allowance First aid allowance Higher duties allowance District allowances – NT and WA
Accident make up pay	Accident make up pay – Victoria
Payment of wages	Provisions re frequency of payment; method of payment

Ordinary hours of work	Protection of spread of ordinary hours Monday to Friday. Notice of rostered days off
Breaks	Meal break Two 10 minute rest breaks each day
Overtime rates	Overtime rates of pay for work in excess of or ordinary hours of work and outside the spread of ordinary hours: time and a half for the first two hours and double time thereafter. Minimum of three hours overtime on a Saturday if employee works 38 hours Monday to Friday. 10 hours between duty where overtime is worked. Return to duty provisions: minimum of three hours at overtime rates. Time off in lieu of overtime
Saturday and Sunday rates	Saturday [within the spread of hours] – time and a quarter Sunday: double time. Minimum of four hours work on a Sunday.
Shift work	Shift arrangements – no more than 10 ordinary hours on any day. Afternoon shift allowance: 15% Night shift allowance: 30% Paid meal break Overtime rates: including double time for all work on a Saturday, Sunday or public holidays if ordinary shift hours do not include such days.

9. This approach to award 'regulation' means employers will have open slather on these vital employee protections by paying rates of pay just 15% above the highest minimum rate in the award. The effect of exemption rates is magnified when the fact that many employees are paid above the minimum award rates as a result of enterprise bargaining is taken into account. This has significantly – fatally – undermined the integrity of the safety net for employees affected by this provision.

10. For example and by way of comparison, the Fair Work Bill \$100,000 guarantee means that employees paid this amount will not be covered by the Award. This equates to an 'exemption rate' of more than \$1900 per week - and the employer must guarantee to pay this rate. The AIRC exemption rate for clerks is half this sum, with absolutely no guarantee of any compensation other than the higher minimum rate (which may be below the actual or paid rate in any case due to enterprise bargaining).
11. Section 330 of the Fair Work Bill provides that high income employees must agree with the terms of the earnings guarantee offered by the employer for them to lose the benefit of modern award coverage. Office employees have no such right. Clerical workers lose their award coverage and protection at a level just 44% of the Government's legislated cut off point.
12. As a result, a savage cut in take home pay for clerical workers looms as the key outcome of the award modernisation process. The ASU has repeatedly advised the AIRC of the impact of award modernisation on women workers and women clerical workers in particular. The AIRC has failed to implement the Government's legislative scheme and parameters in relation to the avoidance of disadvantage to employees.

Call centre employees get wrong numbers...

13. In making of the stage 2 awards in the award modernisation process the Commission has imported into the Clerks-Private Sector Award and the Banking, Finance & Insurance Award hours of work and penalty rates to apply to in-house call centre employees from the *contract call centre industry*, a separate and non-related industry.
14. In-house call centre workers in the Clerical and Finance industries [as well as other industries] have traditionally been paid under the same award as other workers in the relevant industry. The decision of the Commission substantially reduces the safety net for these workers.
15. In stage 2 of the award modernisation process the Commission gave consideration to a number of industries in the Information and Communication Technology group. In relation to the Contract Call Centre Industry the Commission ultimately decided that:

- it was appropriate to create a modern Contract Call Centre Award based on the existing *Contract Call Centre Award 2003* and;
 - hours of work and penalties which apply to employees in the contract call centre industry should apply to all 'in-house call centre' employees in the *Banking, Finance & Insurance Industry Award* and the *Clerks Private Sector Award*
16. The first aspect of the decision is supported [as it was proposed by all Unions and AiG].
 17. The second aspect of this decision is not supported and will have devastating consequences. This aspect of the decision was not sought by any union or employer parties in the modernisation process.
 18. The Contract Call Centre Award (CCC Award) was developed by the major industrial parties in the late 1990s in response to the growth of outsourcing or contracting out of call centre work. The work generally is work that has historically been regulated by awards. The CCC award contained some specific flexibilities (ie ordinary hours which go beyond historical day time operations) that recognised the nature of the work contracted to call centres, the diverse range of industries from which such work is drawn including industries which operate 7 days a week and the need to provide certain flexibilities within call centres.
 19. The specific provisions that have always existed in the CCC Industry relate to ordinary hours of work and penalties for working weekends. It is these provisions that have been lifted from the CCC Award and 'dropped' into the Clerical and Finance Awards.
 20. There are no equivalent predecessor provisions in the clerical industry awards or the banking, insurance and finance awards
 21. The Commission's decision to apply the contract call centre hours and penalty provisions to in-house call centre employees will result in a reduction in the safety net for in-house call centre employees.

22. There is *no* definition of a “call centre” in either the modern clerical award or the modern finance award although the clerical award defines a “call centre worker” as one who:
- uses known routines and procedures;
 - has some accountability for quality outcomes;
 - receives calls;
 - uses call centre technology;
 - enters and retrieves data
23. This description fits the work of a most office based workers who would not be considered ‘call centre’ workers.
24. This description is *not* included in the Finance award though some ‘typical jobs’ in the classifications include some call centre type job titles.
25. The difference in conditions and rates of pay for in-house call centre employees (to whom these additional provisions apply) compared to other employees covered by the modern clerical and banking etc awards are set out in the following table.

Hours of Work and Rate of Pay		
New in-house call centre provisions	General clerical award provisions	General finance award provisions
Monday to Friday outside spread of ordinary hours - payment at 125%	Outside span of hours overtime rates apply - payment at 150% for first 2 hours and 200% thereafter	Outside span of hours overtime rates apply - payment at 150% for first 3 hours and 200% thereafter
Ordinary hours can be worked midnight Friday to	Ordinary hours 7am to 12.30pm Saturday	Ordinary weekly hours 8am to 12pm Saturday

midnight Saturday - payment at 125%	- payment at 125% and after 12.30 pm overtime rates apply	- ordinary rate otherwise payment at 200%
Sunday 7am to 7pm - payment at 150%	Sunday - payment at 200%	Sunday - payment at 200%
Sunday other times - payment at 175%	Sunday - payment at 200%	Sunday - payment at 200%

26. The effect of the additional call centre provisions is to greatly reduce the safety net which applies to in-house call centre employees in the finance industry and call centre employees covered by the modern Private Sector Clerks award. At present in-house call centre employees are entitled to the same safety net as other employees in the industry. Under the Commission's modern award these employees will be subject to longer ordinary hours and lower weekend penalty rates than other employees employed by the same employer.

Take home pay orders – no guarantee at all

27. The Fair Work Transitional and Consequential Provisions Bill makes provision for Take Home Pay Orders where award modernisation results in a reduction in pay for employees. This guarantee only operates for employees engaged at the time the modern award commences and where these employees remain in their current jobs.
28. This can mean that employees could get a promotion at work and end up with less pay and no access to a Take Home Pay Order.
29. The following is the case for a casual Grade 2 Victorian clerk – but there will be other such examples. In the case of casual employees, the main change is that the loading in Victoria falls from 33.3% to 25% but rates of pay are also different and in some cases lower. The calculations are as follows:

Access to take home pay orders – comparison – casual employee under Victorian Clerical & Administrative Employees Award and same employee under modern Clerks Private Sector Award 2010

Casual Clerk Level 2 – after 12 months rate. Works 30 hours per week.

[2008 rates used for comparison purposes.]

Current wage rate is \$623.30 per week. This is a flat \$16.40 or plus 33.3% per week = \$21.86 ph casual rate or \$655.94 for a 30 hour week - **\$34,108.90 per annum.**

On 1st January 2010 – this clerk would translate to Level 1 year 2 of the modern Clerks Award [this is the equivalent level based on the skills utilized]. The new rates for the same hours are:

New rate is level 1 year 2 or \$610 per week or \$16.05 flat per hour. New casual loading is 25% so new hourly casual rate is \$20.06 per hour or \$601.97 per week for a 30 hour week or **\$31,302.60 per annum.**

The difference in pay is less \$2,806 per annum and this employee could obtain a Take Home Pay Order for \$2,806.00 since the result is directly attributable to award modernisation.

However, if, on the 2nd January 2010, the employee was promoted to a level 2 position the rates would be:

Level 2 year 1 rate is \$637.60 [an increase] or \$16.77 flat per hour. Casual rate is \$20.97 per hour or \$629.21 for a 30 hour week or **\$32,718.90 per annum.**

Take home pay is thus still **\$1,390 per annum less** than their old rate in December 2009 but this employee is not eligible for a take Home pay Order because the job has changed.

Example: Casual Clerk – Level 2 after 12 months, 30 hours per week currently paid pursuant to Victorian Clerical & Administrative Employees Award and translated to modern Clerks Private Sector Award.

Year	Grade	Current p/week	Per Hour	+ Casual Loading	30hr p/week	Per annum	Take Home Pay Order
2009	Level 2 12 months	\$623.30	\$16.40	\$21.86 (33 $\frac{1}{3}$ %)	\$655.94	\$34,108.90	
1 Jan 2010	Level 1 Year 2	\$610.00	\$16.05	\$20.06 (25%)	\$601.97	\$31,302.60	\$2,806
2 Jan 2010	Level 2 Year 1	\$637.60	\$16.77	\$20.97 (25%)	\$629.21	\$32,718.90	Not Eligible

* 2008 rates used for comparison purposes