

Fair Work Act 2009.

s.285—Annual wage review

Annual Wage Review of the 'Corrections and Detention (Private Sector) Award 2020/'MA000110'.

1. Approximately 3,000 detention Service Employees would like to take the opportunity to make a submission to the Expert Panel of the Fair Work Commission for its consideration as part of the Annual Wage Review (AWR) 2022-23.
2. The submission is about the '*Corrections and Detention (Private Sector) Award 2020/'MA000110'*'.
3. This submission is not aimed at varying the 'minimum award rate(s)' referenced in table 15.1 (a) Schedule B of *corrections and detention award*, rather, we seek to expand or replace the table to include a 'grade scale'. We believe this will achieve the objectives of the *FWA*.¹
4. Corollary to the above, we would like the FWC President to exercise any of its powers under s290² to institute either an expert panel or conduct its own investigations into the substantive matters raised below.

Grounds.

5. The grounds for seeking this review are that the existing minimum rates, do not properly compensate employees for their work. Evidence compiled shows that detention sector (private) employees are the lowest paid in the sector. The 'aggregate rate' paid by private employers does not compensate for the lack of *penalty rates*,³ *continuous service*, *additional hours*⁴ in breach of NES and *work value*.⁵
6. For this reason, the replacement of the table will,
 - a) provide fair and equitable⁶ pay for the employees (who are currently the lowest paid in this sector).

¹ *Fair Work Act 2009* (Cth) s134.

² *Fair Work Act 2009* (Cth) s 290.

³ '*Corrections and Detention (Private Sector) Award 2020/'MA000110*, Clause 20.3.

⁴ *Fair Work Act 2009* (Cth) s 62 (3) (d).

⁵ *Fair Work Act 2009* (Cth) s 157(2A).

⁶ *Fair Work Act 2009* (Cth) s187(6). *Industrial Relations Act 2016* (Qld) s 4(d).

- b) cure the mischief where employers purport to pay their employees an ‘aggregate rate’ which does not satisfy the obligation of the award and in breach of the National Employment Standards (NES) provisions.⁷
 - c) provide a safety net for employees, who are often induced to vote yes to an enterprise agreement that on its face appears to satisfy the ‘BOOT’⁸ test but in actual fact, does not.
7. Another reason for seeking a review is to bring in line the subject matter ‘private’ award (*Corrections and Detention (Private Sector) Award 2020*) with the public award (*Correctional Employees Award – State 2015*).
 8. Notably, the ‘public award’⁹ (or equivalent) is commendable having varied its grade scale based on **12 months of 'continuous service'**¹⁰ based on the **conduct, diligence, and efficiency of the employee.**¹¹
 9. The private sector award does not have this essential employee entitlement of (“continuous service”). This is distinct from ‘work value’¹²

Why vary the Award?

10. Employee Enterprise agreements (‘EA’) rely on the private award in many aspects. For example, private companies that provide undertaking pursuant to s190(3),¹³ have traditionally relied on the ‘basic award’ as a reference figure to meet the Fairwork BOOT test.
11. *Secondly*, when determining if the ‘aggregate rate’ paid by the enterprise agreement “EA” is ‘above the award’ as required by the FWC. Passing the better-off overall test (‘BOOT’)¹⁴ is an essential requirement and the FWC can only rely on the Award in approving the enterprise agreement.
12. Put another way, if the award does not provide an exhaustive ‘grade scale’, private employers are bound to disadvantage employees through what can only be described as mischief. This disadvantage is prevalent and continues to occur.

⁷ *Fair Work Act 2009* (Cth) s 62 (1).

⁸ *Fair Work Act 2009* (Cth) s 193.

⁹ *Correctional Employees Award – State 2015 (QLD)*.

¹⁰ *Correctional Employees Award – State 2015* Clause 12.6 (a) (ii).

¹¹ *Correctional Employees Award – State 2015* Clause 12.6 (b).

¹² *Fair Work Act 2009* (Cth) s 157(2A).

¹³ *Fair Work Act 2009* (Cth) s 190(3).

¹⁴ *Fair Work Act 2009* (Cth) s 193.

13. *Lastly*, because the variation of the award does not generally involve consultation of the employees and the expert panel may not necessarily be cognisant of particular issues that should be varied in an *Award*, it means the objectives¹⁵ of the FWA and the interests of employees will not be achieved.

Penalty rates

14. To illustrate one example, the employees in the private detentions sector are not entitled to ‘*Award*’ weekend penalty rates.

15. As per the table below, a contrast between the Penalty rates employees ought to receive versus what the employer is paying employees is compelling. I have highlighted the figures in brackets.

16. **Table 1.0 (“Table 20.3” in the award.**

Hours worked during	Award % of the minimum hourly rate	Comparison Private employer¹⁶ Rates paid to employees
Night span	15% (\$55.80)	1.25% (\$5.31)
Night span (permanent night work)	30% (\$111.60)	None (\$0.00)
Saturday span	50% (\$212.28)	1.55% (\$6.58)
Sunday span	100 % (\$424.56)	1.6% (\$6.80)
Public holiday span	250 (\$1061.40)	250% (\$1,061.40)

*Figures are based on the latest “aggregate” rate of **\$35.38** per hour.

17. The difference is enormous, as illustrated in the comparison column above on the right, a detentions service employee who works on Sunday ought to receive **\$424.56** in penalty rates, yet they receive a paltry **\$6.80!**

18. The “aggregate” rate of **\$35.38** per hour paid to employees does not compensate for the unsociable hours worked. Compensating employees for unsociable hours is essential because most employees work unsociable hours regularly.

¹⁵ *Fair Work Act 2009* (Cth) s 134.

¹⁶ SERCO IMMIGRATION SERVICES ENTERPRISE AGREEMENT 2023, clause 29.9 (b).

Proposed variation.

19. There are two proposed variations we propose to make with the '*Corrections and Detention (Private Sector) Award 2020*'/'MA000110', the first is
- a) 12 months 'continuous service'¹⁷ due to conduct, diligence and efficiency of the employee¹⁸ **and,**
 - b) *Work value*¹⁹

'Continuous service'

20. Continuous service is a standard practice within the *corrections and detention State Award* and most state employees, it is distinct from 'Work Value'²⁰ referenced in the *FWC Act*. Continuous service means exactly what it says, generally, an employee in the general service stream is entitled to advance in the grade scale after 12 months of continuous service. The only satisfactory conditions are conduct, diligence, and efficiency.
21. The 'grade scale' is therefore a product of 'continuous service' not 'work value'. If varied, the grade scale will supplement the existing table in clause [15.1(a) schedule B. (not schedule A). We believe this will provide fair and equitable pay to employees and will be consistent with s187(6) of the *FWA*²¹ and Industrial relations objective.²²
22. The impugned (current) provisions table '**[15.1(a) schedule B**' is listed below.

Induction Trainee	871.70	22.94
Detention Services Officer Level 1	896.60	23.59
Detention Services Officer Level 2	940.90	24.76
Operations Co-ordinator	1029.70	27.10

23. Whilst the above table is commendable, it is only relevant to; a) induction Trainee who has worked for a maximum of 6 weeks, b) Detention Service officer level 1; who has worked between zero to one (1) year, c) Detention Service officer level 2; who has worked one (1) to two (2) years and Operations Coordinator of the same period.

¹⁷ *Correctional Employees Award – State 2015* Clause 12.6 (a) (ii).

¹⁸ *Correctional Employees Award – State 2015* Clause 12.6 (b).

¹⁹ *Fair Work Act 2009* (Cth) s 157(2A).

²⁰ *Fair Work Act 2009* (Cth) s 157(2A).

²¹ *Fair Work Act 2009* (Cth) s187(6).

²² *Industrial Relations Act 2016* (Qld) s 4(d).

24. The preponderant purpose of this variation is that there are **no provisions for employees who have worked beyond 24 months**. The consequences if not having this provision has resulted in huge underpayment of employees.
25. To remedy the problem, we would like the commission to supplement the above table with the provisions table below.
- 26. Proposed Table 15.1(a) schedule B’.**

	Weekly pay	Proposed additional Grade Scale	Years
Induction Trainee	\$871.70	\$22.94	0.12
Detention Services Officer Level 1	\$896.60	\$23.59	1
Detention Services Officer Level 2	\$940.88	\$24.76	2
Detention Services Officer Level 3	\$966.49	\$25.43	3
Detention Services Officer Level 4	\$992.80	\$26.13	4
Detention Services Officer Level 5	\$1,019.83	\$26.84	5
Detention Services Officer Level 6	\$1,047.59	\$27.57	6
Detention Services Officer Level 7	\$1,076.10	\$28.32	7
Detention Services Officer Level 8	\$1,105.39	\$29.09	8
Detention Services Officer Level 9	\$1,135.48	\$29.88	9
Detention Services Officer Level 10	\$1,166.39	\$30.69	10
Detention Services Officer Level 11	\$1,198.14	\$31.53	11
Detention Services Officer Level 12	\$1,231.18	\$32.40	12
Detention Services Officer Level 13	\$1,265.32	\$33.30	13
Detention Services Officer Level 14	\$1,300.29	\$34.22	14
Detention Services Officer Level 15	\$1,336.02	\$35.16	15
Detention Services Officer Level 16	\$1,372.31	\$36.11	16
Detention Services Officer Level 17	\$1,409.12	\$37.08	17
Detention Services Officer Level 18	\$1,447.34	\$38.09	18
Detention Services Officer Level 19	\$1,486.91	\$39.13	19
Detention Services Officer Level 20	\$1,527.59	\$40.20	20

* The 'Minimum rate' remains the same.

*The percentage figure applied in the calculation is 2.72% sourced from the 'Correctional Employees Award – State 2015'.

* If the commission is not satisfied with the 2.72 % increase, a figure of 2.44% sourced from the Australian Bureau of Statistics should be applied: <https://www.abs.gov.au/> . This is the average wage increase from 2012 to the present.

Work value

27. We note from the onset that the ‘*work value case*’ may be an onerous hurdle to overcome in light of the ongoing Aged Care Work value case. Notwithstanding the difficulty and the resources involved, it is worth highlighting that detention service (Private sector) employees are not compensated for additional skills they are required to undertake. Interest group may agree by consent to apply the competency value below without using huge resources.
28. Neither the *Award* nor the enterprise agreement²³ has highlighted this matter.
29. Work value is provided pursuant to s157 (2A) of the *FWA*. An employee in the General stream of Table 15.1(a) Schedule B who has satisfied the assessment requirements for a qualification listed in the following table should be paid no less than the minimum allowances per hour.

Proposed “Table 15.1(a) Schedule C”

Qualification	Minimum allowances per hour
AQF-3 (Certificate IV) e.g corrective practice	1.50%
AQF-5 (Relevant Diploma) e.g Community service	1.60%
AQF-7 (Relevant Degree)	1.70%

30. If this table is approved, a detention officer Level 4 (@ rate of \$26.13²⁴) with a diploma in community service or (relevant diploma) as per AQF-5 would be entitled to additional 41cts per hour or \$5.01 per 12-hour shift, or extra or \$15.58 per week. Competency rewards are standard practice in the similar industry of corrections and detentions. The comparative figures above may be sourced from the ‘*Correctional Employees Award – State 2015*’.

Conclusion.

31. Detention service (private sector) employees are the lowest paid in the sector because they do not receive *penalty rates*, no entitlement to *continuous service/work value*, or penalty for the *additional hours*²⁵ worked. Varying the ‘grade scale’ will resolve this deficiency.

²³ SERCO IMMIGRATION SERVICES ENTERPRISE AGREEMENT 2023.

²⁴ New proposed Clause 15.1(a) Schedule B; (“Table 15.1(a) Schedule B”) _2023.

²⁵ Currently the employees work additional 4 hours a week beyond 38-hour limit as per NES.

32. We encourage the commission to undertake a robust consultation or investigation and invite any interest groups to provide further comments or reply to the matters raised above. Note