

Australian Industry Group

# 4 YEARLY REVIEW OF MODERN AWARDS

## **Submission**

General Issues and Group 3  
Revised Exposure Drafts

**2 August 2017**

**Ai**  
GROUP

**4 YEARLY REVIEW OF MODERN AWARDS  
GENERAL ISSUES AND EXPOSURE DRAFTS: GROUP 3**

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## 1. INTRODUCTION

1. On 6 July 2017, the Fair Work Commission (**Commission**) published a Decision (**6 July Group 3 Decision**) relating to the awards allocated to Group 3 of the award stage of the 4 yearly review of modern awards (**Review**).
2. In the 6 July Group 3 Decision, interested parties were directed to file submissions by 28 July 2017 (subsequently extended to 4 August 2017) on various issues, including:
  - The hourly rates of pay schedule;
  - The use of the term “occupational health and safety” in modern awards; and
  - Several revised Group 3 exposure drafts.
3. On 14 July, 17 July, 20 July, various revised Group 3 exposure drafts were published.
4. The Australian Industry Group (**Ai Group**) files this submission in accordance with the aforementioned directions.
5. In addition to addressing the general issues of the hourly rates of pay schedule, the term “occupational health and safety” and the characterisation of premiums payable, this submission deals with the following exposure drafts:
  - a. *Exposure Draft – Banking, Finance and Insurance Award 2015;*
  - b. *Exposure Draft – Business Equipment Award 2015;*
  - c. *Exposure Draft – Commercial Sales Award 2015;*
  - d. *Exposure Draft – Contract Call Centres Award 2015;*
  - e. *Exposure Draft – Electrical Power Industry Award 2015;*
  - f. *Exposure Draft – Market and Social Research Award 2015;*
  - g. *Exposure Draft – Miscellaneous Award 2015;*

h. *Exposure Draft – Telecommunications Services Award 2015.*

## 2. HOURLY RATES OF PAY SCHEDULE

6. In the 6 July Group 3 Decision, the Commission proposed at paragraphs [360] to [362] that:

- In modern awards that contain an all purpose allowance which applies to only some employees, clause X.1.2 will be amended to include a notation along the lines of the following:

“Consistent with Clause B.1.1, all purpose allowances need to be added to the rates in the table where they are applicable.”

- A footnote be inserted next to “% of ordinary hourly rate” in the heading row of the rates table, stating:

“Rates in table are calculated based on the minimum hourly rate, see clauses X.1.1 and X.1.2.”

- Where an award contains an all purpose allowance that applies to *all* employees *and* that allowance has been incorporated in the rates in the hourly rates tables, this will be identified by a note along the following lines:

“**Ordinary hourly rate** includes the industry allowance payable to all employees for all purposes.”

7. A list of awards containing all-purpose allowances was included as Attachment B to the 6 July 2017 Decision.

8. The Commission invited interested parties to express any objections to the above proposals and/or to provide any comments on the list of applicable awards in Attachment B.

9. Ai Group does not object to the above proposals.

10. Ai Group has not identified any problems with the list of applicable allowances in Attachment B. However, we have not checked the allowances in every award to ascertain whether the list is entirely accurate.

### 3. THE TERM ‘OCCUPATIONAL HEALTH AND SAFETY’

11. Ai Group supports the replacement of the term ‘occupational health and safety’ in modern awards with the term ‘work health and safety’.
12. Ai Group does not have any objections to the amendments detailed in Attachment C to the 6 July Group 3 Decision.

### 4. THE CHARACTERISATION OF PREMIUMS PAYABLE PURSUANT TO AN AWARD

13. In its 6 July Group 3 Decision, the Commission determined that a consistent approach on how premiums relating to shiftwork are expressed in the exposure drafts is appropriate (see paragraphs [375] to [377]). The Commission also accepted Ai Group’s submissions that there are inconsistencies within the exposure drafts on this topic.
14. Further, the Commission expressed (at paragraphs [378] – [379]) an intention to give other parties an opportunity to respond to the contention in [Ai Group’s submission of 31 August 2016](#), that there are problems in numerous exposure drafts which arise from inconsistent terminology in different clauses, particularly in relation to annual leave loading provisions.
15. Significant inconsistencies remain in the way that penalties, loadings and shiftwork premiums are expressed in the exposure drafts, including within the revised exposure drafts issues pursuant to the 6 July Group 3 Decision.
16. To give just one example, in the *Exposure Draft – Banking, Finance and Insurance Award 2015*, the term ‘shiftwork loading’ has been replaced with ‘shiftwork penalties’ in the heading to clauses 7.7(d) and B.2.1. However, the exposure draft still refers to the relevant amount as a loading on three occasions as follows:
  - Clause 7.7(d) refers to: ‘The following **loadings** will apply in relation to the working of shiftwork’ (emphasis added);

- Clause 7.7(d) also contains a table footnote that states: ‘Employees who permanently work afternoon or night shift or a combination thereof will be paid an additional **5% loading**’ (emphasis added); and
  - Clause 14.3(b)(ii), in relation to annual leave loading, states that the annual leave loading is ‘17.5% **or the shift loadings** and relevant weekend penalty rates, whichever is the greater but not both’ (emphasis added).
17. As identified in the 6 July Group 3 Decision, this issue needs to be given further consideration by the Commission and interested parties.

## **5. EXPOSURE DRAFT – BANKING, FINANCE AND INSURANCE AWARD 2015**

18. Ai Group has not identified any issues with the variations made to this exposure draft.
19. Some concerns about inconsistent terminology and associated problems, are noted above. Also, [Ai Group’s submission of 31 August 2016](#), identifies inconsistent terminology in this Award and the problems that such inconsistent terminology will cause.

## **6. EXPOSURE DRAFT – BUSINESS EQUIPMENT AWARD 2015**

20. With regard to the question at clause 7.2(a) of the exposure draft, Ai Group answered this question at paragraphs 133-134 of our submission of 14 April 2016. That is, the provision allows for the spread of hours to be altered by up to one hour at one or both ends of the spread simultaneously.
21. Clause 7.8(b) states that ‘Country employees’ are defined in clause 17.6(a)’, but there is no definition included in the exposure draft. Clause 7.8(b) should be deleted. A definition is not necessary.

22. [Ai Group's submission of 31 August 2016](#), sets out inconsistent terminology in this Award and the problems that such inconsistent terminology will cause.

## **7. EXPOSURE DRAFT – COMMERCIAL SALES AWARD 2015**

23. Ai Group has not identified any issues with the variations to this exposure draft.

## **8. EXPOSURE DRAFT – CONTRACT CALL CENTRES AWARD 2015**

24. Ai Group has not identified any issues with the variations made to this exposure draft.

25. [Ai Group's submission of 31 August 2016](#), sets out inconsistent terminology in this Award and the problems that such inconsistent terminology will cause.

## **9. EXPOSURE DRAFT – ELECTRICAL POWER INDUSTRY AWARD 2016**

26. The Commission determined in the 6 July Group 3 Decision at paragraph [52] that it was appropriate to amend this exposure draft to reflect the changes agreed between the parties, as noted in the 25 May 2016 report to the Full Bench of Senior Deputy President Hamberger (**25 May 2016 Report**).

27. Ai Group has identified three issues with the subsequent amendments to the exposure draft.

### **Clause 10.1 – Minimum wages**

28. Item 9 in Attachment A of the 25 May 2016 Report noted the following agreed variation:

Clause 10.1 Pay level 8 – insert reference to 'Operations Grade 8' immediately under the words 'Professional/Manager/Specialist Grade 8'

29. The reference to ‘Operations Grade 8’ has been included with a formatting issue. The inclusion requires a line break to place it on its own line to be consistent with the formatting of the rest of the table.

#### **Clause 14.4 – Illness during a period of annual leave**

30. Item 17 in Attachment A of the 25 May 2016 Report noted the following agreed variation:

Clause 14.4 replace the word ‘personal’ with the words ‘personal/carers’

31. This amendment has been made, however a typographical error has arisen. The changed wording should read ‘personal/carer’s’ rather than ‘personal/carers’ to be consistent with the remainder of the award and the National Employment Standards.

#### **Clause 14.9 – Payment on termination of employment**

32. Item 18 in Attachment A of the 25 May 2016 Report noted the following agreed variation:

Clause 14.7 add the word ‘annual’ after the word ‘accrued’ and replace the words ‘ordinary rate of pay’ with the words ‘minimum hourly rate’

33. These agreed changes have not occurred as intended.
34. This change was related to the ‘Payment on termination of employment’ clause, which at the time of the 25 May 2016 Report was referenced as clause 14.7. The error appears to have arisen due to the relevant clause being renumbered from 14.7 to 14.9. The change in clause numbering is the result of the addition of model excessive leave accrual clauses in accordance with a determination of the Commission dated 29 July 2016<sup>1</sup> to give effect to the *4 yearly review of modern awards—Annual leave common issues case*.<sup>2</sup> As a result, the agreed variation is outstanding, and should be made to clause 14.9.

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<sup>1</sup> [PR582996](#).

<sup>2</sup> [\[2016\]FWCFB 3177](#) at [302].

35. Clause 14.7 – ‘Excessive leave accruals: request by employee for leave’, has had the word ‘annual’ inserted after the word ‘accrued’ where it appears in that clause. That addition is in error and should be removed.
36. [Ai Group’s submission of 31 August 2016](#), sets out inconsistent terminology in this Award and the problems that such inconsistent terminology will cause.

## **10. EXPOSURE DRAFT – MARKET AND SOCIAL RESEARCH AWARD 2015**

37. Ai Group has not identified any issues with the variations to this exposure draft.

## **11. EXPOSURE DRAFT – MISCELLANEOUS AWARD 2015**

38. Ai Group has not identified any issues with the variations to this exposure draft, with the exception of a minor formatting issue in clause 10.3(b)(ii). The space before the comma in the third line should be removed.

## **12. EXPOSURE DRAFT – TELECOMMUNICATIONS SERVICES AWARD 2015**

39. Ai Group has not identified any issues with the variations to this exposure draft.
40. [Ai Group’s submission of 31 August 2016](#), sets out inconsistent terminology in this Award and the problems that such inconsistent terminology will cause.