

From: Paula Thomson [mailto:Paula.Thomson@afei.org.au]
Sent: Monday, 16 May 2016 8:58 AM
To: AMOD
Subject: RE: AFEI submissions in reply - Group 3

Good morning Daniel,

Thank you for bringing this discrepancy to our attention. Our submissions at paragraph 52-54 do relate to the *Gardening and Landscaping Services Award*, not the *Miscellaneous Award*. Please find attached **amended** submissions to reflect this. The amendments made in this version are only relevant to the abovementioned two awards.

Kind regards,

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From: AMOD [mailto:AMOD@fwc.gov.au]
Sent: Sunday, 15 May 2016 2:55 PM
To: Paula Thomson <Paula.Thomson@afei.org.au>
Subject: AFEI submissions in reply - Group 3

Dear Ms Thomson,

I refer to your [submissions in reply concerning the Group 3 exposure drafts](#).

At paragraphs 52-54 AFEI purports to respond to submissions made by the Australian Workers' Union (AWU) on the exposure draft for the *Miscellaneous Award*, however we do not appear to have received submissions from the AWU concerning this award.

We believe these submission in reply relate instead to the [AWU's submissions on the exposure draft of the Gardening and Landscaping Services Award](#), as your submissions in reply appear to match these AWU submissions.

Can you please confirm whether or not we are correct on this point?

Yours sincerely,

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Australian Federation of Employers and Industries (AFEI)

4-Yearly Review of Modern Awards
Submissions in Reply
Group 3 Exposure Draft Awards
6 May 2016



Australian Federation of
Employers & Industries

Australian Federation of Employers and Industries (AFEI)

Submission in Reply - Group 3 Exposure Draft Awards

9 May 2016

1. AFEI makes the following submissions in reply on drafting and technical issues concerning Group 3 Exposure Draft Awards.

Banking, Finance and Insurance Award

2. The words 'and those employees' in Clause 3.1 appears inconsistent with many modern awards which use the words 'and their employees.' The word 'their' clarifies that the Award covers employees of an employer operating in the banking finance and insurance industry. It's suggested the word 'those' be replaced with the word 'their.'
3. The reference to Clause 9.3(a) in the facilitative provisions (clause 5.2) should include agreement between an employer and 'the majority of employees or an individual.' The current award at Clause 20.1 refers to mutual agreement with 'employees' rather than 'an employee.'
4. AFEI agrees with AIG's submission that Clause 11.2 should be clarified to state that a pro-rata amount will be paid to part-time employees, however submits that this should also be extended to casual employees (for allowances applicable to casual employees).
5. The Report to the Full Bench dated 2 May 2016 advises that Clause 11.3(b)(ii) of the exposure draft would be amended to reflect a proposal by AIG (at item 25 of the summary of submissions). The exposure draft has not yet been amended to reflect this.

Business Equipment Award

6. AFEI is opposed to the definitions of 'country territory' proposed by the ASU and Business SA insofar as each of these introduce new questions about what is "regional" and what is a "regional city or town". We consider these definitions may have the impact of substantially altering the application of the current award by expanding the circumstances in which the allowance would otherwise be paid.
7. AFEI agrees with AIG that B.3.2 incorrectly characterises overtime payment on a Sunday as at 200%. The current award states an employee is paid double time on a Sunday only where they work on a day off. Otherwise the overtime rate is at time and a half for the first three hours and double time thereafter.

Clerks (Private Sector) Award

8. ABI and AIG have submitted there is an incorrect reference to 13.5(c). AFEI is also of the view this should be a reference to clause 13.6(a).
9. AFEI is of the view clause 6.2(a)(iii) has been substantively changed so that employees under the exposure draft will be required to have reasonably predictable hours of work. This is not reflective of the wording in the current award. AFEI agrees with the amendment to this clause proposed by AIG. AFEI further agrees the phrase "*who do the same kind of work*" should be removed from the award as it is wording which does not appear in the current award and is unnecessary.
10. AFEI is not opposed to the wording "*for each engagement*" in Clause 6.3(d)
11. AFEI does not oppose the amendment suggested by AIG to amend clause 8.1 to reference ordinary hours of "*up to 38*" rather than just "*38*". AFEI further does not oppose the suggested amendment of the clause to insert the words "*per week*" after "*38*".
12. It is AFEI view that the span of hours in Clause 8.2(b) can be altered at both ends.
13. AFEI does not oppose amendment to Clause 10.1 of the exposure draft to clarify that the rates are minimum rates for full-time employees, as highlighted by AIG.
14. AFEI agrees with AIG that the higher duties allowance (currently in Clause 10.5) should be relocated to clause 11 so not to vary the application of the annual salary provision as it is provided for in the current award.
15. AFEI does not oppose the amendments proposed by AIG to Clause 11.3.
16. AFEI agrees with AIG that clause 13.4(a) should be amended so that it is consistent with the current award and breaks are to be arranged "*wherever it is reasonably able to be done*".
17. AFEI opposes Business SA's proposed definition for a shiftworker at Clause 14.1. AFEI is of the view that a shiftworker definition is not necessary.

Commercial Sales Award

18. AFEI agrees with the submission of AIG that Clause 9.1 is misleading as a result of failing to specify that the weekly rate only applies to full time employees. This could be rectified by amending the wording from 'An employer must pay an adult employee' to 'An employer must pay a full time employee.'
19. The issue referred to above could be further addressed with clarification in Clause 6.3 that part time employees receive the same minimum wages as a full time employee, but on a pro-rata basis.

20. AFEI does not agree to the definition of 'headquarters' included in the exposure draft. The term does not require a definition in the award. The proposed definition is likely to result in confusion, particularly in the circumstances that a Commercial Traveller is (by definition) someone who works primarily 'away from the employer's usual place of business.' When read in conjunction with Clause 10.2, this could result in an (erroneous) interpretation that Commercial Travellers are entitled to a weekend allowance for every weekend worked.
21. AFEI agrees with the amendments made to Clause 10.2(f)(i) and (ii) in the revised exposure draft.
22. AFEI agrees with the amendments made to Clause 13.3(a) in the revised exposure draft.
23. Removal of the words 'soliciting orders' in Clause 16.3 of the exposure draft involves a substantive change. The words should be retained. There are different rates that apply for 'soliciting orders' on a public holiday (clause 16.3); and 'travelling' on a public holiday (clause 16.4).
24. AFEI agrees with the amendment to Schedule A.1.2 in the revised exposure draft.

Contract Call Centres Award

25. AFEI agrees with AIG and ABL that clause 8.1 allows the span of hours to be altered by up to two hours in total (one hour at each end).

Educational Services (Post-Secondary Education) Award 2010

26. The NTEU and AHEIA submit that the rate of pay for time spent travelling between an employee's usual place of employment and a temporary location should be the rate of pay ordinarily payable for work at that time. AFEI disagrees. The provision in the current award make it clear that the payment of travel occurs at the ordinary time rate, that is, the rate of pay exclusive of penalties. The NTEU's proposed variation would involve a substantive change.
27. AFEI agrees with the submissions of ABI concerning Clause 15.5(a).

Educational Services (Schools) General Staff Award

28. In response to the submission of the AIS and the IEU to amend clause 6.4(a)(ii) of the Exposure Draft to include a reference to clause 7, AFEI is of the view that a reference to clause 7 is unnecessary and does not clarify the operation of clause 6.4(a)(ii).
29. AFEI is opposed to the inclusion of an example as proposed by the IEU at clause 7.2 and 10.2(d).

30. AFEI is opposed to the submission of the AIS and the IEU to include in 10.2(c)(i) that the clause is subject to the provisions of Clause 24.2 – consultation about changes to rosters or hours of work . A change of roster by mutual consent or with 7 days’ notice, will not invoke the consultation process in clause 24.2 of the exposure draft. Including a reference to this clause is likely to lead to employers’ misunderstanding their obligations.
31. The AIS and IEU propose to amend clause 15.5 of the exposure draft and insert a clause 15.4(b). The current Award does not require the broken shift penalty to be paid in addition to other penalties. The proposal from the AIS and IEU for the exposure draft to require accumulation of penalties would involve a substantive change to the modern award.

Fitness Industry Award

32. AFEI agrees with Business SA and AIG that extending Clause 8.3 to casual employees would involve a substantial change to the award.

Gardening and Landscaping Award

33. ABI has suggested the removal of the words “*at least*” from the Exposure Draft at clause 6.4(b). AFEI supports this proposed amendment. We take this opportunity to once again note AFEI has made a submission raising concern with clause 6.4 of the Exposure Draft as it appears to restrict the rostering of part-time employees in a way not contemplated in the current award.
34. The AWU has submitted the reference in clause 6.4(c) to be to the “*ordinary hourly rate of pay*” rather than the “*minimum hourly rate of pay*”. This would be a departure from the current award which AFEI opposes.
35. The AWU has proposed to include the following words into Clause 6.4 “*All time worked in excess of the agreed hours will be overtime and paid for at the appropriate overtime rate in clause 13 – Overtime and penalty rates*”. This is a substantive change to the current award which AFEI opposes.
36. The AWU submits the penalty payment at Clause 9.1(b) should be at “150% of the applicable rate” rather than “150% of the ordinary hourly rate”. This is a departure from the current award which AFEI opposes.
37. It is AFEI’s view that the leading hand allowance in Clause 11.2 is not an all-purpose allowance.
38. The AWU has made a submission that clause 13.3(a) be amended from “*at least 10 consecutive hours off duty between the work on successive days*” to “*10 consecutive hours off duty between completing the overtime and commencing ordinary hours*”. AFEI does not view such an amendment as necessary.
39. The AWU has also submitted that casuals (at clause 13.3(b)) should not be excluded from application of the provision 10 consecutive hours off without loss of pay. AFEI considers this a substantial departure from the current award and opposes the proposed amendment.

40. The AWU has suggested amending clause 14.5(b) to read “*an additional loading of 17.5% of the ordinary hourly rate per hour of leave taken*” instead of “*an additional loading of 17.5% of the minimum hourly rate prescribed in clause 10 – Minimum wages*”. This amendment is not necessary.

Higher Education Industry (General Staff) Award

41. The NTEU’s proposal to extend coverage to medical research institutes in Clause 3 would involve a substantive change.
42. AFEI disagrees with NTEU’s submissions concerning clause 6.7, there is no need for awards to stipulate provisions concerning probation periods.
43. AFEI disagrees with the NTEU’s submissions concerning Clause 9.2(b)(iii). The award needs to remain clear that the allowance is paid instead of any other shift penalty that may apply.

Horticulture Award

44. AFEI agrees with the Voice of Horticulture that 10.2(a) – minimum wages – pieceworkers should be removed from the facilitative provisions.
45. The AWU submissions concerning Clause 6.4 are not technical and drafting issues, they relate to substantive matters currently part of the Casual and Part-time Common Proceedings.
46. The variation sought by the AWU in clause 8.1(a)(iv) involves a departure from the current award, and is opposed by AFEI.
47. AFEI disagrees with the AWU’s suggestion that the words ‘appropriate minimum wage’ in Clause 9.2(c) includes shift loading for shift workers and opposes the proposed inclusion of ‘applicable rate of pay.’
48. For the purpose of submissions by other parties concerning clause 10.2, AFEI refers to its initial submissions dated 15 April 2016 concerning the piecework rate during leave.
49. AIG has highlighted that Clause 15.1 involves a substantive change from the current award, as it extends application of overtime rates to casual employees. The wording of Clause 15.1 in the exposure draft should reflect the current Award.
50. The AWU has identified that Clause 15.4 of the exposure draft does not clarify that the meal allowance is not payable if a meal is supplied. The wording of Clause 24.3 of the current award is however clear on this issue, and could be retained.
51. Clause 16.8 is not inconsistent with the NES as purported by the AWU, the exposure draft does not exclude payment of annual leave loading on termination. The Award does not require express terms in order for leave loading to be payable on termination.

Labour Market Assistance Industry Award

52. AFEI agrees with Jobs Australia concerning the distinction between 'approved leave' and 'approved paid leave' for the purpose of clause 8.4(b).

Legal Services Award

53. AFEI agrees with ABI that the drafting of clause 11.2(b) of the exposure draft introduces a new substantive requirement into the Award.

Miscellaneous Award

54. AFEI agrees with the submissions of AIG that Clause 10.1 is misleading as a result of failing to specify that the weekly rate only applies to full time employees. AFEI agrees with the proposed rectification in the exposure draft.

Nursery Award

55. AWU submits that clause 17.7 should be amended to reference payment of annual leave at the appropriate wage calculated not only under 17.3 but also 17.4 (which prescribes loading). AFEI does not consider the amendment is necessary and oppose it as it departs from the current award.

Sporting Organisations Award

56. AFEI disagrees with the AWU's proposed amendment to this Clause 6.5(c). The term of the current award should be retained, and the clause should state: *'A casual employee must be paid per hour at the rate of 1/38th of the weekly rate prescribed for the class of work performed plus a loading of 25%'*

Telecommunications Services Award

57. AFEI supports the submission of AIG that clause 15.5(b) of the exposure draft features a substantive change. The current award provides that casual and part-time employees are excluded from this provision, but the exposure draft only retains the exclusion for casual employees. This has not been amended in the revised exposure draft.

Wine Industry Award

58. AFEI does not oppose the clarification suggested by the NFF for Clause 6.4 and 6.5 of the exposure draft, as pieceworkers are remunerated other than in accordance with an hourly rate.
59. AFEI agrees with submissions by AIG and NFF, that Clause 6.6 of the exposure draft should mirror the current Award pending the outcome of the casual and part-time issue common proceedings. The exposure draft deviates from the current award in a number of respects as identified by a number of parties; in particular, AFEI agrees with the AMWU's submissions concerning 6.6(a) and (b)(i), that there are two references to 6 months that should be amended to 12 months.

60. AFEI does not oppose deletion of Clause 8.5(b)(iii).
61. AFEI specifically opposes use of the term 'applicable rate of pay' in clauses 16.2(d) and 24.3(i). The appropriate term in these clauses is 'minimum rate of pay.' The appropriateness of introducing such new terminology into *Manufacturing and Associated Industries and Occupations Award 2016* remains contentious. Accordingly, AFEI do not agree with the AWU's proposal for use of this terminology in any provision of the Award.
62. AFEI agrees with submissions of the NFF and AIG concerning clause 19.3(a) of the exposure draft, that it introduces a new substantive requirement. This change is opposed by AFEI.