Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Amended Submission – Exposure Draft

Market and Social Research Award 2010

(AM2014/236)

4 JULY 2016

4 YEARLY REVIEW OF MODERN AWARDS

AM2014/236 MARKET AND SOCIAL RESEARCH AWARD 2010

1. The Australian Industry Group (Ai Group) filed submissions in respect of the *Exposure Draft – Market and Social Research Award 2016* (Exposure Draft) dated 5 May 2016. On 30 June 2016, during a conference before His Honour Justice Ross, Ai Group was requested to file amended submissions.

2. This submission is filed in accordance with His Honour's request. Submissions that are no longer pressed by Ai Group have been struck out.

~~**Regular employees**~~

~~3. There are various current award terms that refer to "regular employees". In the following Exposure Draft provisions, that reference has altered:~~

- ~~Clause 8.2: full-time and part-time employees;~~
- ~~Clause 8.3: full-time and part-time employees;~~
- ~~Clause 8.3(d): full-time and part-time employee;~~
- ~~Clause 8.6: all employees;~~
- ~~Clause 8.7: part-time employees;~~
- ~~Clause 9.4: full-time or part-time employee;~~
- ~~Clause 9.5(a): all employees;~~
- ~~Clause 10.2: all employees;~~
- ~~Clause 12.2(a): full-time or part-time employee.~~

~~4. We are concerned that in some, if not all, of the above clauses, the redrafting has resulted in a substantive change. We note that clause 6.4 of the current award, which deals with the engagement of part-time employees, does not,~~

~~require that a part-time employee's hours be fixed; and by extension, a part-time employee's ordinary hours of work may not necessarily be 'regular'.~~

5. ~~We propose that this matter be dealt with by way of a conference between interested parties.~~

Clause 3.4 – Coverage

6. Clause 3.4 refers to the *"industry set out in clauses 3.1 and 3.2".* Clause 3.1 is not a definition of the industry. Clause 3.2 is. We submit the reference to clause 3.1 is removed.

Clause 3.5 – Coverage

7. Clause 3.5 refers to the *"industry set out in clauses 3.1 and 3.2".* Clause 3.1 is not a definition of the industry. Clause 3.2 is. We submit the reference to clause 3.1 is removed.

Clause 6.5(c)(ii) – Casual Loading

8. Clause 6.5(c)(ii) refers to the "entitlements" of full-time and part-time employment. The current award at clause 11.3(b) uses the words "attributes".

9. The casual loading was introduced for a number of reasons; it is an over simplification to suggest that it exists to directly compensate for comparative entitlements only.

10. Many of the reasons for a casual loading cannot be described as 'entitlements'. Rather, many of the reasons related to broader issues associated with the differences in the forms of employment.

11. The word *'attributes'* is capable of describing both entitlements and non-entitlement-based reasons for the casual loading. We submit the word 'attributes' should remain unchanged.

Clause 7.2 – Classifications

12. The reference to "Schedule B" is an error, it should reference "Schedule A".

Clause 8.5 – Ordinary hours of work and rostering

13. Clause 8.5 refers to the "casual hourly rate of pay set out in clause 9". Clause 9 does not, however, set out a casual hourly rate of pay. The cross reference should be amended to "clause 6.5(c)".

Clause 10.4(b) – Expenses reimbursement

14. Clause 17.1(a)(i) of the current award requires an employer to reimburse an employee for certain expenses. Those expenses are described as having been "actually and properly incurred by the employee as required by the employer in the discharge of the employee's duties". Clause 17.1(a)(ii) then states that such expenses; that is, expenses of the sort referred to in the preceding subclause, that can reasonably be anticipated will be payable in advance.

15. Clause 10.4(b) deviates substantively from the current clause 17.1(a)(ii). This is because the word "such" at the commencement of the clause has been deleted. The effect is that clause 10.4(b) requires that *any* expenses, without limitation, that can reasonably be anticipated will be payable in advance. The application of the clause is no longer limited to expenses of the type referred to above.

16. For these reasons, the word "such" should be inserted at the commencement of clause 10.4(b).

Clause 13.1 – Out of hours penalty

17. We refer to the question to parties as to whether the penalties, which are under the current award, expressed as a percentage of the standard rate, should be expressed as a percentage of the employee's employees' minimum hourly rate.

18. We submit such a change could significantly increase existing payroll costs. Employers make over-award remuneration offers taking into account the existing and predictable additional costs associated with the employment. A

change which would reference a percentage of the employees' earnings could compound the costs for certain employers. We submit the current fixed model of compensation for such working hours should remain unchanged.

Clause 13.2 – Out of hours penalty

19. We refer to the question to parties regarding the rate of time off in lieu for penalty rates. The current award does not provide for a 'time for penalty' basis. Rather, it provides "time off instead".

20. The award does not presently prescribe the quantum of the time off that may be taken. Rather, this is left to the discretion of the employer. To introduce such prescription would amount to a substantive change that is unwarranted.

~~**Clause 17.2 – Public Holidays**~~

~~21. The Exposure Draft contains a new clause which provides that where an employee works on a public holiday, either overtime of penalty rates shall apply. Such a clause does not exist in the current award.~~

~~22. The effect of the unnecessary inclusion of this clause is as follows:~~

- ~~The clause may confuse as to the appropriate payment method for work on a Public Holiday by reference to two possible methodologies. Such issues are already dealt with by those clauses where the payment arises.~~

- ~~The clause mandates that only one of those two payment methodologies can apply. This eliminates the ability to work make-up time on a public holiday for the purposes of clause 8.8(a) and could confuse the payment methodology of an employee who as part of an RDO cycle whereby part of the their work time is ordinary hours and part is overtime designated for the accrual of an RDO (and not to be paid for the time so work as mandated by the new clause).~~

Clause 23.1 – Dispute resolution procedure training leave

23. We refer to the question to parties regarding the reference to the Workplace Relations Act 1996 *(Cth)*. We agree the reference should be amended to reflect the *Fair Work Act 2009 (Cth)*.

Schedule A.5 Door-to-door interviewer

24. A new sub-clause has been added for this role. The current award groups both the Executive (face-to-face) interviewer and door to door interviewer together. The addition of the sub-clause incorrectly suggests the two roles are distinct classifications.

25. The format in the current award should be retained.