



## Australian Federation of Employers and Industries (AFEI)

Submissions pursuant to Amended Directions of the  
Fair Work Commission on 21 December 2016 concerning Group 4  
Exposure Draft awards: AM2014/256, etc

# AFEI

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## Submissions pursuant to Directions of the Fair Work Commission on 21 December 2016 concerning Group 4D, E and F Exposure Draft awards

18 January 2016

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1. The following submissions are made pursuant to Directions of the Fair Work Commission (**the Commission**) on 21 December 2016 concerning the following Group 4 Exposure Draft awards:
  - a. *Amusement, Events and Recreation Award 2016;*
  - b. *Broadcasting and Recorded Entertainment Award 2016;*
  - c. *Racing Clubs Events Award 2016;*
  - d. *Travelling Shows Award 2016;*
  - e. *Car Parking Award 2016;*
  - f. *Cemetery Industry Award 2016;*
  - g. *Food, Beverage and Tobacco Manufacturing Award 2016;*
  - h. *Funeral Industry Award 2016;*
  - i. *Pest Control Industry Award 2016;*
  - j. *Professional Employees Award 2016; and*
  - k. *Dry Cleaning and Laundry Industry Award 2016.*

## **4D: Amusement, Events and Recreation Award 2016**

### **Clause 1.1: Title and commencement**

2. Clause 1.1 contains a typographical error. The Award is incorrectly referred to as the “Amusement **and** Events and Recreational Award 2016”. This ought to be corrected to ‘Amusement, Events and Recreation Award 2016’.

### **Clause 7.2: Facilitative provisions**

3. The list of facilitative provisions ought to refer to Clauses 13.3 (agreement with a majority of employees only) and 13.4 (agreement with an individual employee) rather than Clause 13.2 which is not a facilitative provision.
4. Clause 19.4 (agreement with an individual employee) has been excluded from the list of facilitative provisions). The table at Clause 7.2 should be amended to include Clause 19.4 as a facilitative provision.

### **Clause 10.3: Part-time employees**

5. Clause 10.3 of the Exposure Draft has been structured in a manner that is both inconsistent with the current award and other Exposure Drafts (see, eg. *Clerks – Private Sector Award 2015* as at 11 October 2016).
6. The structure of Clause 10.3 of the Exposure Draft appears to include only hours worked each day in the ‘regular pattern of work’. AFEI is concerned this has the effect of providing no mechanism for variation of other elements of the ‘regular pattern of work’ as set out in the current award (days of the week, starting and finishing times).
7. Clause 10.3 of the Exposure Draft ought to be updated as follows:

**10.3** *At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least:*

*(a) the hours worked each day;*

*(b) which days of the week the employee will work; and*

*(c) the actual starting and finishing times each day.*

### **Clause 13.2: Ordinary hours of work**

8. AFEI is of the view the Exposure Draft should adopt wording which better clarifies that the maximum shift length in Clause 13.2 is subject to the exceptions in Clauses 13.3 and 13.4. The Exposure Draft ought to include words at the end of 13.2 to the effect ‘*unless otherwise agreed in accordance with clauses 13.3 or 13.4*’.

### **Clause 14.1, 14.3: Rostering arrangements, special provisions for exhibition employees**

9. References to *Clause 26 – Consultation about changes to rosters or hours work* are unnecessary and serves to make the Exposure Draft lengthier. These references ought to be removed from the Exposure Draft.

### **Clause 19: Overtime**

10. The heading of this clause (*'Overtime'*) is misleading, as some sub-clauses, including Clauses 19.3, 19.4 and 19.5 are not concerned with overtime. The heading should be amended to *'Overtime and Penalty Rates'*, which is consistent with the current award.

*In response to questions in the Exposure Draft:*

### **Clause 17.3(b): Meal allowance**

11. The meal allowance should continue to be restricted to *'an ordinary working day'*, which is consistent with the current award. Removal of the restriction would be a substantive change from the current award.

## **4D: Broadcasting and Recorded Entertainment Award 2016**

*In response to questions in the Exposure Draft:*

### **Clause 7.2: Facilitative provisions**

12. Clause 7.2 of the Exposure Draft provides for agreements under Clause 40.3 between an employer and a majority of employees. Neither Clause 40.3 nor the current award Clause 38.1(c) provide for such an agreement only between an employer and a majority of employees. The Exposure Draft has introduced a substantive change from the current award and Clause 7.2 ought to be amended to also provide for agreement between an individual employee and an employer.

### **Clause 11.3: Payments for musicians (other than session singers)**

13. AFEI is of the view the rates at Clause 13.11 are not hourly rates but are payable per engagement.

## **4D: Racing Clubs Events Award 2016**

### **Clause 4.1: Coverage**

14. The first line of Clause 4.1 of the Exposure Draft has introduced an additional reference to *'and their employees'*. This phrase does not appear to provide any additional clarification and serves to make the clause lengthier. The first reference to *'and their employees'* in Clause 4.1 should be removed from the Exposure Draft.

### **Clause 17.2: Junior employees**

15. Clause 17.2 of the Exposure Draft ought to be amended to refer to the '*percentage of the minimum wage introductory level*' to maintain the effect of the current award.

#### *In response to questions in the Exposure Draft:*

### **Clause 17.4: School-based apprentices**

16. As this award does not provide for apprentices, Schedule D-School-based Apprentices is not required.

### **Clause 20.1(b): Allowances – Loss of clothing**

17. The loss of clothing allowance would be more appropriately treated as an expense-related allowance. This allowance provides for the reimbursement of a cost resulting from loss of clothing.

### **Clause A.2.4: Method of adjustment**

18. The Exposure Draft does not require any further clarification on the minimum payments in clause 12.4 and 12.5. The Exposure Draft is sufficiently clear.

## **4D: Travelling Shows Award 2010**

### **Clause 18.2: Higher duties**

19. Clause 18.2 of the Exposure Draft ought to be amended to refer to '*for up to and including four hours*' to maintain the effect of the current award.

### **Schedule A.2.1: Casual adult employees**

20. The heading in Schedule A.2.1 should be amended to delete the words '*and penalty*' as the table does not contain penalty rates.

#### *In response to questions in the Exposure Draft:*

### **Clause 22.1: Penalty rates - Sundays and public holidays – Casual employees**

21. Clause 22.1 of the Exposure Draft no longer applies. Both the current award and the Exposure Draft are clear that Clause 22.1 only applied until 31 December 2014.
22. Clause 22.2 of the Exposure Draft does not apply to casual employees. Both the current award and the Exposure Draft are clear that the penalties in clause 22.2 apply only to full-time and part-time employees.

## **4E: Car Parking Award 2016**

In response to questions in the Exposure Draft:

### **Clause 11.6: Casual employment – minimum engagement**

23. The minimum payment applies per day. The current award clearly states the payment is per day. The current award does not provide for the minimum payment on a ‘*per shift*’ or ‘*per engagement*’ basis.

## **4E: Cemetery Industry Award 2016**

In response to questions in the Exposure Draft:

24. It is not necessary to insert a definition of the ‘*cemetery and crematorium industry*’ into the Exposure Draft. AFEI is not aware of any concern from our members about the coverage of this Award.

## **4E: Food, Beverage and Tobacco Manufacturing Award 2016**

### **‘Applicable’ rate of pay**

25. AFEI has previously opposed the insertion of the new definition ‘*applicable rate of pay*’ into modern awards, including in our 23 November 2015 submissions concerning the *Manufacturing and Associated Industries and Occupations Award* Exposure Draft.
26. Generally, AFEI opposes the inclusion of ‘*applicable rate of pay*’ in place of ‘*ordinary hourly rate*’. In particular AFEI opposes the inclusion of ‘*applicable rate of pay*’ in the following provisions as these represent substantive changes from the current award:
- a. *Clause 13.5 – Meal breaks;*
  - b. *Clause 20.2(f)(iv) – Travelling time payment;*
  - c. *Clause 22.12 – Standing by; and*
  - d. *Clause 27.5(a)(i) – Rostered day off falling on public holiday.*

27. Further, the extra rates provision is now no longer a stand-alone clause in the Exposure Draft (as it is in the current award). The extra rates provision is now a sub-clause of Clause 20 – *Allowances and Special Rates*. As the ‘*extra rates*’ referred to include penalties and loadings not otherwise found in Clause 20, the Exposure Draft ought to retain the extra rates clause as a stand-alone clause to avoid any risk of changing the effect of the clause.

### **Clause 7.2(a): list of facilitative provisions**

28. The reference to clause 22.9 should be amended to clause 22.9(d) which is the actual provision that allows facilitation by agreement.

### **Clause 22.2(b): Unrelieved shiftwork on rostered day off**

29. It is AFEI's view the current wording of Clause 33.1(d) should be retained. In the alternative, for clarity, the Exposure Draft Clause 22.2(b)(ii) should begin '*Clause 22.2(b)(i) does not apply when less than 7.6 hours' notice...*'
30. Clause 22.2(b)(i) contains a typographical error. The word '*be*' appearing before '*required to work*' should be removed.

## **4E: Funeral Industry Award 2016**

### **Clause 7.2: Facilitative provisions for flexible working practices**

31. The table at Clause 7.2 of the Exposure Draft should also refer to Clause 18.4(a) which provides for variation of the method of working shifts by agreement between the employer and a majority of employees or the employer and an individual employee.

### **Clause 18.4: Method of working shifts**

32. The reference to Clause 27 – Consultation about changes to rosters or hours work is unnecessary and serves to make the Exposure Draft lengthier. Clause 18.4(c) ought to be deleted from the Exposure Draft.

### **In response to questions in the Exposure Draft:**

### **Clause 14.3: Meal Breaks – other than shiftworkers**

33. Clause 14.1 is clear that it is unpaid except for pay for ordinary hours occurring during this period. Clause 14.2 is sufficiently clear the rest periods are paid.
34. AFEI is of the view clause 14.3(a) provides for an unpaid meal break. This is consistent with a number of relevant pre-modern awards and other modern awards.

### **Clause 16(c): Uniform allowances**

35. The uniform allowance applies only to full-time employees. Clause 15.8 of the current award clearly states only a full-time employee will be entitled to this allowance. Any variation applying this allowance to all employees would be a substantive change to the award.

### **Clause 18.6: Overtime for shiftworkers**

36. Overtime for shiftworkers applies on the minimum hourly rate (not inclusive of shift loadings). The shift loading is paid for shiftworkers working ordinary hours within a defined shift (afternoon or non-continuing afternoon).

## **4E: Pest Control Industry Award 2016**

### **Clause 4.2: Definitions**

37. The '*pest control industry*' is defined in both Clause 4.2 and Clause 2. This duplication is unnecessary and serves to make the Award a lengthier document. The definition at Clause 4.2 is not required.

### **Clause 17.4(c): Safety clothing and equipment**

38. Clause 17.4 of the Exposure Draft has broken up the current award clause 15.8(c) so that now an employer is required to provide reasonable facilities for safe keeping of equipment. Clause 15.8(c) of the current award does not require any employer to provide reasonable facilities for safe keeping of equipment. Clause 15.8(c) of the current award requires an employee to replace equipment lost or destroyed by negligence in circumstances where the employer provided reasonable facilities for safe keeping. Clause 17.4 of the Exposure Draft is a substantive change from the current award. The wording of Clause 15.8(c) of the current award ought to be retained.

#### **In response to questions in the Exposure Draft:**

### **Clause 22.3: Annual leave – payment and loading**

39. AFEI is of the view the correct interpretation is (17.5% of the minimum rate) + the industry and first aid allowance. These allowances are not all-purpose and do not make up the minimum rate.

## **4E: Professional Employees Award 2016**

### **Clause 2.1: Definitions**

40. The definition of '*communications*' includes a typographical error. The word 'or' should be deleted at the end of point (e) and inserted at the end of point (d). Additionally, the sentence at (f) should stand alone and not form part of the above list.

### **Clause 7.2: List of facilitative provisions**

41. The current award lists Clause 18.1 *Ordinary hours of duty work rostered* as a facilitative provision. The Exposure Draft has omitted reference to the corresponding clause from the list of facilitative provisions. The Exposure Draft ought to be amended to reflect the current award by including the now Clause 13.2 provision for *Ordinary hours of duty work rostered* in the list of facilitative provisions. Consistent with the current award this involves an agreement between an employer and an individual.



#### **Clause 17.4: Annual close-down**

42. AFEI considers the Exposure Draft, at Clauses 17.4(a)-(b), has changed the effect of the current award provision Clause 19.4. Under the current award it is only necessary to reach agreement with a majority of employees in the enterprise, section or sections affected by the close-down. This effect is not reproduced in the corresponding Exposure Draft clause. The Exposure Draft provisions appears as if an agreement would need to be reached with a majority of total employees rather than those only in the particular enterprise or section/s. This is a substantive change from the current award.
43. The words 'in that enterprise, section or sections' ought to be inserted at the end of Clause 17.4(a) of the Exposure Draft. In the alternative, the current Award clause 19.4 should be retained.

#### **In response to questions in the Exposure Draft:**

#### **Clause 13.2: Ordinary hours of work**

44. The current award does not specify a maximum number of weeks over which 38 hours may be averaged. Any proposal to specify a maximum number of weeks over which 38 hours may be averaged would be a substantive change from the current award.

#### **Clause A.1.2(a): Classifications**

45. AFEI does not oppose inserting a reference to a five year degree into the Exposure Draft. It is clear Pay Point 1.1 contemplates employees who have completed a five-year degree.

### **4F: Dry Cleaning and Laundry Industry Award 2016**

#### **Clause 4.2 and Clause 2: Definitions**

46. The '*dry cleaning and laundry industry*' is defined in both Clause 4.2 and Clause 2. This duplication is unnecessary and serves to make the Award a lengthier document. The definition at Clause 4.2 is not required.

#### **Clause 18.2, 18.3: Wages of junior employees**

47. AFEI notes that the Exposure Draft contains a clause 18.1 which has varied clause 14.1 of the current award to include in the table of minimum wages *hourly rates* of pay in addition to the current award weekly rates of pay. Clause 18.2 and 18.3 of the Exposure Draft, however, only provides juniors with payments of minimum wages equivalent to percentages of the *weekly* rate. For the purposes of clarification and consistency with the current award, Clauses 18.2 and 18.3 of the Exposure Draft ought to be amended to provide payments for junior employees based on a percentage of the '*minimum adult rate*'.

#### **Clause 14.4: Ordinary hours of work – laundry workplaces**

48. Clause 14.4 of the Exposure Draft ought to be amended to include the word *'average'* in front the phrase *'weekly wage'*. This would reflect the wording and intention of the current award which specifically refers to "*the average weekly wage rate for the employee's classification*".