

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission – Survey Results

Social, Community, Home Care and
Disability Services Industry Award 2010
(AM2018/26)

3 July 2019

Ai
GROUP

AM2018/26 SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES AWARD 2010 – SURVEY RESULTS

1. This submission is filed by the Australian Industry Group (**Ai Group**) in accordance with directions issued by the Fair Work Commission (**Commission**) on 11 June 2019 regarding a survey conducted by the Commission (**Survey**) and a report setting out the results of the survey, published on 26 June 2019 (**Report**).

General Observations about the Profile of the Survey Respondents

2. The Report notes that the Survey was “not designed to be representative of all enterprises that employ workers covered by the SCHADS award”.¹
3. Ai Group submits that the results of the Survey must be given appropriate weight given that the Survey is not representative of all employers covered by the *Social, Community, Home Care and Disability Services Industry Award 2010* (**Award**). Whilst the Survey results are demonstrative of various propositions, they are not reflective of the practices of all employers covered by the Award and cannot be extrapolated as such.
4. Over 60% of the Survey respondents operated in the disability services sector. This includes residential care and care provided in a person’s home.² This represents over 500 respondents to the Survey.³ They Survey results are, therefore, particularly useful when considering the operations of enterprises who operate in the disability services sector.
5. The majority of survey respondents were not covered by an enterprise agreement. Thirty-five percent of respondents indicated that an enterprise agreement applies to their employees covered by the Award⁴. Of those, 30% indicated that not all of their Award covered employees had an enterprise

¹ The Report at page 1.

² The Report at page 2.

³ That is, 63% of the 854 complete responses received to the Survey.

⁴ The Report at page 4.

agreement applying to them.⁵ The potential impact of the unions' numerous claims advanced in these proceedings is self-evident from these results.

6. The responses of the Survey respondents to whom enterprise agreements apply are also relevant to the proceedings:
 - (a) The safety net set by the Award will determine whether the relevant enterprise agreements are capable of passing the 'better off overall' test.⁶ Employers covered by such agreements are therefore also potentially exposed to the adverse impacts that will flow from the proposed enhancements to the minimum safety net.
 - (b) To the extent that the terms of the relevant enterprise agreements incorporate the Award or parts of the Award, the proposed variations may have a direct bearing on such employers.
 - (c) For the purposes of assessing whether the proposed changes are necessary to ensure that the Award achieves the modern awards objective, the Commission must take into account the need to encourage collective bargaining.⁷ This involves a consideration of whether employers who are currently covered by enterprise agreements will be incentivised to bargain again as well as whether enterprise agreements who are not covered by enterprise agreements will be incentivised to engage in bargaining.
7. The Survey results demonstrate a high degree of reliance on Commonwealth government funding. Close to 90% of survey respondents identified that they receive Commonwealth government funding.⁸ The relevance of the National Disability Insurance Scheme (**NDIS**) and the constraints it imposes on an

⁵ The Report at page 4.

⁶ Section 193 of the *Fair Work Act 2009*.

⁷ Section 134(1)(b) of the *Fair Work Act 2009*.

⁸ The Report at page 10.

employer's capacity to recover additional employment costs is apparent from these results.⁹

Survey Results relating to Casual Employees

8. The Health Services Union is seeking a variation to the Award that would have the effect of requiring the payment of the 25% casual loading prescribed by clause 10.4(b) of the Award during the performance of ordinary hours of work on a weekend or a public holiday. The casual loading is not currently payable in those circumstances.
9. Additionally, United Voice is seeking a variation to the Award that would have the effect of requiring the payment of the 25% casual loading prescribed by clause 10.4(b) during the performance of overtime in circumstances where currently, the casual loading is not payable for the performance such work.
10. The aforementioned union claims were heard by the Commission with the other 'Tranche 1' claims. Ai Group filed submissions opposing the claims on 8 April 2019.¹⁰ Amongst the various arguments made by Ai Group in opposition to the claims, we advanced the proposition that the proposed changes would have an adverse impact on business by virtue of the additional employment costs they would impose, which would not be covered by the NDIS's funding arrangements.¹¹ Submissions were also made about the heavy reliance of employers on casual labour.¹²
11. The results of the Survey support Ai Group's aforementioned contentions.
12. Close to 40% of Award-covered employees employed by the Survey respondents were casual employees.¹³ Furthermore, during a four week

⁹ Ai Group submission dated 8 April 2019 at paragraphs 153 – 163.

¹⁰ Ai Group submission dated 8 April 2019 at pages 70 – 82.

¹¹ Ai Group submission dated 8 April 2019 at paragraph 189(f).

¹² Ai Group submission dated 8 April 2019 at paragraph 189(d).

¹³ The Report at pages 5 – 6.

period in March 2019, 75% of Survey respondents had employed casual employees.¹⁴

13. We note that whilst employers covered by enterprise agreements were more likely to employ casual employees than those who were not covered by enterprise agreements¹⁵, the extent of the differential is not remarkable and in either case, a significant proportion of employers employed casual employees.
14. We also observe that 77% of enterprises who receive Commonwealth government funding employed casual employees.¹⁶
15. The Survey results accordingly demonstrate the significant reliance of employers covered by the Award on casual labour. It is a matter that goes to the potential impact of the claims advanced by the unions. The Survey results demonstrate that the impact of the claims would be significant; both in the aggregate and on individual employers who rely on casual employment to provide the requisite level of flexibility necessary for their operations.
16. This proposition is further advanced by the Survey results concerning the extent to which casual employees are apparently required to work on Saturdays and Sundays:
 - (a) 76% of casual employees employed during the aforementioned four week period worked on a Saturday; and
 - (b) 70% of casual employees employed during the aforementioned four week period worked on a Sunday.¹⁷
17. The Survey results demonstrate a high incidence of casual employees working on weekends.

¹⁴ The Report at pages 7 – 8.

¹⁵ The Report at page 14.

¹⁶ The Report at pages 17 – 18.

¹⁷ The Report at page 9.

18. The Survey results indicate that 25% of casual employees employed during the aforementioned four week period worked in excess of 38 hours in a week or 76 hours in a fortnight.¹⁸ We note that these are not the only circumstances in which casual employees are entitled to overtime rates. Pursuant to clause 28.1(b)(ii) of the Award, casual employees are also entitled to overtime rates if they perform more than 10 ordinary hours of work in a day. To that extent, the Survey results do not reveal the full extent to which casual employees are entitled to overtime rates.

¹⁸ The Report at page 8 – 9.