

IN THE FAIR WORK COMMISSION

2014 Modern Award Review

(AM2014/248) (AM2014/259) (AM2014/237)

Community and Public Sector Union (CPSU) (PSU Group)

Submissions in reply regarding Tranche 3 *Telecommunications Services Award Exposure Draft and Broadcasting, Recorded Entertainment and Cinema's Award Exposure Draft and Miscellaneous Award Exposure Draft* 29 January 2020

1. These submissions are made in accordance with the Decision in [2020] FWCFB 421 of 29 January 2020 and the amended timetable in the Statement in [2020] FWCFB 1539 regarding next steps for Tranche 3 Awards. The CPSU also refers to the background paper of 23 March 2020.

Telecommunications Services Award Exposure Draft

2. The CPSU notes the submissions of the Ai Group of 6 March 2020 regarding, inter alia, the *Telecommunications Services Award Exposure Draft* of 29 January 2020.
3. The CPSU has reviewed those submissions and the changes/corrections proposed by the Ai Group at [75]-87] and supports those changes with only two comment as follows. In response to the question in the Discussion paper of 23 March at [325] (Q63), the CPSU understands the AiG's view that a reference to clause 15.1 could be seen as excluding clause 15.2 or 15.3. But we say the reference should be to clause 15 generally, not just 'this award'.
4. In response to the question at [328] of the Discussion paper (Q64), regarding the tables at B2.3 and B2.4, the CPSU says whether B.23 or B2.4 is removed, the name of the table that remains should be "full and part time employees – overtime". This is because there is not a need to distinguish shiftworkers from workers other than shiftworkers as they have a similar entitlement to overtime.
5. In response to the question at [332] of the Discussion paper (Q65) regarding the footnote referring to the annualised salary. The CPSU agrees with the proposal put by the Commission to amend the footnote.

Broadcasting, Recorded Entertainment and Cinema's Award Exposure Draft

6. The CPSU notes the ABI and NSWBC of 6 March 2020 regarding, inter alia, the *Broadcasting, Recorded Entertainment and Cinema's Award Exposure Draft* 29 January 2020.

7. In response to the question in the Discussion paper of 23 March 2020 at [38] and [50] (Q4) the CPSU supports the provisional views expressed by the Full Bench. The CPSU makes no comment regarding the views expressed at [54] (Q4) or [44] (Q5).

Commercial Radio Australia submissions and Annual Leave Loading

8. The CPSU refers to the submissions made on behalf of Commercial Radio Australia (CRA) dated 12 February 2020. This is (Q7) in the Discussion paper of 23 March 2020 and paragraph [71].
9. In those submissions CRA identifies what it believes to be ambiguity in the Award regarding the payment of annual leave loading. They refer to earlier submissions of 21 December 2016 where they propose to delete the existing clause and propose a new one. The CPSU does not support the clause outlined by CRA, although it does agree with the sentiment expressed at [5] of those submissions that employees should not receive 17.5% leave loading in addition to their shift penalties.
10. The CPSU says to the extent the Annual Leave Loading clause in the Exposure Draft (and for that matter the current Award) is ambiguous about the payment of the 17.5% Annual Leave Loading on top of shift penalties, it should be altered as part of the technical and drafting processes for this award.
11. The Exposure Draft provides:
 - 18.3 Annual leave loading**
 - Before the start of the employee's annual leave the employer must pay the employee:
 - (a) Subject to clauses 32.1(d) and 32.2(d), instead of the base rate of pay referred to in section 90(1) of the Act, the amount the employee would have earned for working their normal hours, exclusive of overtime had they not been on leave; and
 - (b) An additional loading of 17.5% of the relevant minimum wage for their classification as set out in this award.
12. The CPSU agrees the Award clause appears to require the payment of 17.5% loading on a rate of pay which for shiftworkers would include their shift penalty.
13. The CPSU refers to the consideration of the Annual Leave Loading issue in various awards and the Statements in [2019] FWC 8582 and [2019] FWC 8468. While the *Broadcasting, Recorded Entertainment and Cinema's Award* was not included in the process dealt with in the Statement above, the issue raised by CRA also relates to Annual Leave Loading and any change to the Exposure Draft may involve those issues of how to adequately express the clause and avoid the issues regarding how rates, loadings or penalties are in [2019] FWCFB 5409. The CPSU understands the

outcome of the process dealing with Annual Leave Loading was for issues about it to be dealt with on an award-by-award basis.

14. The CPSU does not support the clause proposed by the CRA because we believe the clause is particularly clear regarding the two entitlements. It does not make clear the entitlement to receive the 17.5% loading on the ordinary rate of pay or shift penalties on ordinary pay if they are higher than 17.5%.
15. The CPSU suggests the clause be amended to provide for employees to received their ordinary rate of pay (which is defined to include all purpose allowances) and 17.5% and for shiftworkers to receive the higher of either 17.5% or the shift penalties they would have received had they performed work. The CPSU can provide a draft clause if required.

Miscellaneous Award Exposure Draft

16. The CPSU notes the provisional view at [272] of the Discussion paper of 23 March 2020 (Q49). We support the provisional view, noting however as part of the Overtime for Casuals common matter the CPSU will not be support the ABI position. It is the CPSU's view that the determination of the overtime clause in the *Miscellaneous Award* should see overtime provisions apply to the casual loading.

CPSU – Sydney 7 April 2020