

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Reply Submission
Finalisation of Exposure Drafts –
Tranche 3
(AM2019/17)

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Ai
GROUP

**4 YEARLY REVIEW OF MODERN AWARDS
FINALISATION OF EXPOSURE DRAFTS – TRANCHE 3**

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1. INTRODUCTION

1. The Australian Industry Group (**Ai Group**) files this reply submission in relation to the following 'third tranche' of exposure drafts published by the Fair Work Commission (**Commission**) on 29 January 2020:
 - (a) *Black Coal Mining Industry Award* (**Black Coal Award**);
 - (b) *Electrical, Electronic and Communications Contracting Award* (**Electrical Contracting Award**);
 - (c) *Food, Beverage and Tobacco Manufacturing Award* (**FBT Award**);
 - (d) *Graphic Arts, Printing and Publishing Award* (**Graphic Arts Award**);
 - (e) *Horticulture Award* (**Horticulture Award**);
 - (f) *Miscellaneous Award*
 - (g) *Nurses Award*;
 - (h) *Professional Employees Award* (**Professionals Award**);
 - (i) *Sugar Industry Award* (**Sugar Award**);
 - (j) *Telecommunications Services Award* (**Telecommunications Award**);
 - (k) *Textile, Clothing, Footwear and Associated Industries Award* (**TCF Award**);
 - (l) *Timber Industry Award* (**Timber Award**); and
 - (m) *Wine Industry Award* (**Wine Award**).
2. The submission is filed in response to the Commission's background paper of 23 March 2020 (**Background Paper**) and submissions filed by other interested

parties. Our submission has been prepared by reference to the questions contained at Attachment A to the Commission's statement¹ of 23 March 2020.

2. THE 'UNCONTENTIOUS AWARDS'

Question 1 – Paragraph [10] of the Background Paper

3. Ai Group does not oppose the minor drafting changes proposed to the *Sugar Industry Award 2010*.
4. Ai Group does not seek to advance a submission in respect of the remaining 'uncontentious awards.'

3. BLACK COAL AWARD

Response to Submissions of the CFMMEU

5. All matters raised by the CFMMEU were the subject of a Conference which took place before President Ross on 20 March 2020. A Report has been circulated by the Commission and an opportunity has been afforded to the parties to make submissions on its contents.
6. Ai Group's position on this matter has not changed from that which was expressed at the Conference on 20 March 2020.

4. BUSINESS EQUIPMENT AWARD

Question 8 – Paragraph [64] of the Background Paper

7. Ai Group supports the Commission's provisional view.

¹ 4 yearly review of modern awards [2020] FWCFB 1539.

5. ELECTRICAL CONTRACTING AWARD

8. Ai Group agrees to the submissions made by ABI except as set out below.
9. Ai Group proposes that whilst there is a difference between the definition of “hourly rate” in clause B.1.1 and that contained in the definition, we do not see that this is likely to cause any conflict. The schedules appropriately reflect the inclusion of tool allowances where payable and exclude all other all-purpose allowances. An explanation is reflected in the notation under the tables.
10. If there is any confusion, Ai Group proposes that clause B.1.1 be amended to include the words “ as set out in this schedule” after the words “Ordinary hourly rate” so as to read “*Ordinary hourly rate, as set out in this schedule, includes the industry allowance (clause 18.3(a)) and tool allowances as applicable (clause 18.3(g)) which are payable for all purposes*”.

6. FBT AWARD

Question 15 – Paragraph [94] of the Background Paper

11. Ai Group agrees with the AMWU’s submission.

Question 16 – Paragraph [102] of the Background Paper

12. Ai Group does not oppose the amendments proposed.

Question 17 – Paragraph [109] of the Background Paper

13. Ai Group does not oppose the amendments proposed.

7. GRAPHIC ARTS AWARD

Response to submissions of the AMWU (dated 5 March 2020) and the Commission's provisional view at paragraph [117] of the Background Paper

14. Ai Group agrees with the AMWU's submission with respect to clause 13.4(c)(iii) of the exposure draft. The reference to clause 20.4(c)(ii) should read clause 13.4(c)(ii).
15. Ai Group does not oppose the AMWU's proposal to vary clause 15.3 regarding the meal break penalty to refer to the 'ordinary hourly rate'. This is consistent with the Commission's decision to delete the definition of the "hourly rate" in its decision of 4 April 2019.
16. This deals with Question 19.

Question 20 – Paragraphs [120] and [122] of the Background Paper

17. We agree with the Commission's provisional view.

8. HORTICULTURE AWARD

Question 25 – Paragraph [148] of the Background Paper

18. We agree with ABI's submission and submit that the word "ordinary" should be retained.

Question 29 – Paragraph [158] of the Background Paper

19. We do not oppose the AWU's submission.

Question 30 – Paragraph [160] of the Background Paper

20. We agree with the AWU's submission.

Question 31 – Paragraph [163] of the Background Paper

21. We do not oppose the AWU's submission.

Question 32 – Paragraph [165] of the Background Paper

22. Without accepting the AWU’s assertion about “widespread compliance issues”, we do not oppose the insertion of tables prescribing the casual overtime rates, given that the rate at which they are to be calculated is not in issue in the ‘Overtime for Casuals’ common issues proceedings.
23. Ai Group respectfully submits that interested parties should be given an opportunity to review the rates before they are included in the award.

9. MISCELLANEOUS AWARD

Response to submissions of ABI (dated 6 March 2020) and the Commission’s provisional view at paragraph [272] of the Background Paper

24. Ai Group agrees with ABI/NSWBC’s position, as expressed in paragraph [41] of its 6 March 2020 Submission that clause 11.2 of the exposure draft departs from the current award in that it implies that a casual loading will be payable during periods of overtime.
25. Ai Group agrees with the Commission’s provisional view expressed at paragraph [272] of the Background Paper that until the question of the entitlements afforded to casual employees during periods of overtime has been resolved in the context of the ‘Overtime for Casuals’ matter (AM2017/51), the drafting pertaining to the casual loading should be maintained as reflected in the current award.

10. NURSES AWARD

Question 51 – Paragraph [281] of the Background Paper

26. We agree with the course of action proposed by the Commission at paragraph [280] of the Background Paper.

11. PROFESSIONALS AWARD

Response to submissions of ABI (dated 6 March 2020) and the Commission's provisional view at paragraph [285] of the Tranche 3 Background Paper

27. Paragraphs [282] – [285] of the Tranche 3 Background Paper incorrectly attribute to Ai Group a Submission that the opening words to cl. 2.4 be amended as follows:

“Academic schedule ~~means~~ includes”.

28. This is the position of the ABI, as reflected in paragraphs [43] – [45] of their 6 March 2020 Submissions.

29. **Ai Group strongly opposes the variation proposed by ABI and the provisional view at paragraph [285] of the background paper.**

30. **Altering the wording in clause 2.4 as proposed by ABI would have the effect of significantly expanding the coverage of the Award.**

31. The list of qualifications which are included within the definition of ‘Academic schedule’ are exhaustive rather than inclusive.

32. The definition of ‘Academic schedule’ impacts on the definition of ‘professional scientific duties’, ‘qualified scientist’, ‘experienced scientist’ and ‘professional scientist’, also in proposed clause 2.4 of the exposure draft.

33. ABI’s proposal is inconsistent with decades of relevant developments relating to the federal award coverage of scientists.

34. ABI’s proposal is also inconsistent with the outcome of the extensive negotiation process between Ai Group and APESMA (the two main industrial parties for the Professionals Award) that led to agreed variations to the Award being submitted to the Commission in the *4 Yearly Review – Professional Employees Award – Hours of Work Case* (AM2019/5).

12. SUGAR AWARD

Response to the submission of the AWU (dated 6 March 2020)

35. Ai Group agrees that the cross reference to clause. 31.3(b) in clause 31.3(b)(iii), should read clause. 31.3(b)(ii). This is consistent with clause. 33.3(b)(iii) of the current award which states (emphasis added):

Bulk terminals

For employees in bulk terminals, the annual leave loading in paragraphs (i) and (ii) above must be 25%.

13. TELECOMMUNICATIONS AWARD

Response to matters raised in the Background Paper

Clause B.2.4 – Full-time and part-time employees – Overtime

36. At paragraph 84 of Ai Group's 6 March 2020 submission, it was proposed that clause B.2.4 (full and part-time employees – overtime rates) be deleted as the rates contained therein appeared to be the same as the rates in clause B.2.3 (Full and part-time employees other than shiftworkers – overtime rates).
37. At paragraph [327] of the Background Paper, the Commission noted that this issue may also be resolved by amending the heading of B.2.4 to read 'Full time and part time employees – shiftworkers – overtime rates'
38. Ai Group does not oppose the Commission's proposed course of action.

Schedule B – Certain classifications exempt from various entitlements

39. At paragraphs [85] – [87] of Ai Group's 6 March 2020 submission, it was noted that Footnote 1 to each of the tables of rates in Schedule B requires updating as a result of the variations made to the annualised salaries clause in the Telecommunications Award. The Commission proposes, at paragraph [332] of the Background Paper, that it may be sufficient to amend the footnote to state:

An employer may pay a full-time employee employed in a particular classification, an annualised wage in satisfaction of any or all of the award provisions listed in clause 15.

40. Ai Group supports the variation made to the footnote but suggests that it remains necessary to revisit the rates included in the tables for the following classifications:
- Principal Customer Contact Leader;
 - Telecommunications Associate; or
 - Clerical and Administration Level 5.
41. Many of the rates for the above classifications were left blank on account of the fact that the former annualised salary clause functioned as an exemption from payment of certain overtime and penalty rates.
42. As the current annualised wage arrangement provision merely allows for these entitlements to be substituted by way of an annualised salary, Ai Group considers it necessary for overtime and penalty rates for these classifications to be included in Schedule B.

14. TCF AWARD

Question 67 – Paragraph [338] of the Background Paper

43. We support the Commission's provisional view.

Question 68 – Paragraph [340] of the Background Paper

44. We agree with ABI's submission.

Question 72 – Paragraph [354] of the Background Paper

45. We agree that the changes proposed by the CFMMEU should be made.

Question 73 – Paragraph [362] of the Background Paper

46. Ai Group does not oppose the variation proposed by the CFMMEU.

Question 74 – Paragraph [364] of the Background Paper

47. We do not oppose the Commission’s provisional view.

15. TIMBER AWARD

Question 76 – Paragraph [377] of the Background Paper

48. Ai Group does not oppose the amendment proposed by the CFMMEU.

Question 77 – Paragraphs [380] of the Background Paper

49. We do not oppose the change proposed by the CFMMEU.

Question 77 – Paragraphs [384] of the Background Paper

50. We do not oppose the change proposed by the CFMMEU.

Question 77 – Paragraphs [387] of the Background Paper

51. We agree that the change proposed should be made.

Question 77 – Paragraphs [394] of the Background Paper

52. We do not oppose the change proposed by the CFMMEU.

Question 77 – Paragraphs [402] of the Background Paper

53. As identified during a conference before Commissioner Bissett on 1 April 2020, Ai Group opposes the changes proposed by the CFMMEU. Whilst the matter was not resolved during the aforementioned conference, we undertake to engage in further discussions with the CFMMEU about the matter with the aim of resolving the issue. We will advise the Commission as soon as practicable of the outcome of those discussions.

Question 77 – Paragraphs [405] of the Background Paper

54. We do not oppose the change proposed by the CFMMEU.

Question 77 – Paragraphs [421] of the Background Paper

55. As identified during a conference before Commissioner Bissett on 1 April 2020, Ai Group opposes the changes proposed by the CFMMEU. Whilst the matter was not resolved during the aforementioned conference, we undertake to engage in further discussions with the CFMMEU about the matter with the aim of resolving the issue. We will advise the Commission as soon as practicable of the outcome of those discussions.

Question 77 – Paragraphs [424] of the Background Paper

56. We agree that the change proposed should be made.

Question 77 – Paragraphs [428] of the Background Paper

57. We do not oppose the change proposed by the CFMMEU.

Question 77 – Paragraphs [436] of the Background Paper

58. We do not oppose the change proposed by the CFMMEU.

16. WINE AWARD

Question 81 – Paragraph [452] of the Background Paper

59. We agree with the Commission's provisional view.

Question 81 – Paragraph [458] of the Background Paper

60. We agree with the Commission's provisional view. Ai Group made similar submissions, as set out at paragraphs [442] – [447] of the Background Paper.

Question 82 – Paragraph [461] of the Background Paper

61. We agree that clause 20.1(b) should be deleted.

Question 83 – Paragraph [466] of the Background Paper

62. We do not oppose the changes proposed by the SAWIA.

Question 84 – Paragraph [470] of the Background Paper

63. We do not oppose the changes proposed by the SAWIA.