



Australian Federation of Employers and Industries (AFEI)
Submissions in Reply - Exposure Draft Awards, Groups 4D, E and F:

22 February 2017

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1. The following reply 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*;
 - k. *Dry Cleaning and Laundry Industry Award 2016*; and
 - l. *Fast Food Industry Award 2016*.

Amusement, Events and Recreation Award 2016

Clause 1: Title

2. AFEI agrees with the Australians Workers' Union's (**AWU**) proposal that the award title ought to be corrected to the '*Amusement, Events and Recreation Award 2016*'.
3. AFEI does not support the AWU's submissions that another clause needs to be added to Clause 1.1. The proposed clause is already included through Clause 5 of the Exposure Draft.

Clause 4: Coverage

4. AFEI does not object to the AWU's submission for Clause 4.2(c) to apply to the entirety of Clause 4.
5. AFEI does not object to Business SA's submission to re-organise the provisions of Clause 4.

Clause 7: Facilitative provisions

6. AFEI agrees with the submissions by the AWU and Business SA that the facilitative provisions (at Clause 7.2 of the Exposure Draft) should include reference to Clauses 13.3 and 13.4.

Clause 13: Ordinary hours of work

7. AFEI does not object to the AWU's proposal to change the title of the clause to '*Ordinary hours of work and rostering*'.

Clause 16: Minimum wages

8. AFEI does not support the AWU's proposed changes to the preamble of the clause.

Clause 17.3(b): Meal allowance

9. AFEI supports the submissions of Business SA in response to the Commission's question regarding meal allowances. AFEI does not agree with the AWU's submission in this regard.

Clause 19: Overtime

10. In regard to the AWU's submission concerning Clause 19.1 of the Exposure Draft the 'omission' is appropriate as daily ordinary hours can, by agreement, exceed 8 hours.
11. In regard to the AWU's and Business SA's submissions that Clause 19.5 of the Exposure Draft should state '*ordinary hours worked on a Sunday*' we note that this proposal is inconsistent with the current award at Clause 23.3(a).

Broadcasting and Recorded Entertainment Award 2016

Clause 13.4: Employees in cinemas – 8% loading

12. AFEI agrees with the submissions of Birch Carol, Hoyts, Greater Unions, Village Cinemas and the Independent Cinema Association. The Exposure Draft now requires the 8% loading in the current award Clause 14.12 to be payable for all-purposes. This is a substantive change from the current provisions of the award which do not require the 8% loading to be payable for all-purposes. Accordingly, the Exposure Draft should be amended to reflect the provisions of the current award.
13. AFEI agrees also with the submissions of Birch Carol, Hoyts, Greater Unions, Village Cinemas and the Independent Cinema Association that under the Exposure Draft it

appears an employer is required to 'compound' the casual loading on a loaded hourly rate. This approach is not consistent with the 'accumulative' approach adopted by the Commission during the award modernisation process and as a consequence is a substantive deviation from the effect of the current award.

Clause 16.7: Annual leave loading

14. AFEI agrees with Commercial Radio Australia Ltd that the Exposure Draft Clause 16.7 would permit employees to 'double-dip' and receive both a 17.5% leave loading and any relevant shift loading. The Exposure Draft should be amended to ensure employees can only access the greater of either the shift loadings or 17.5% leave loading during the period.

Racing Clubs Award 2016

Clause 2: Definitions

15. The AWU has proposed to include a definition for shop day in Clause 2 of the Exposure Draft. AFEI does not consider the inclusion of this definition to be necessary. Shop day is defined in Clause 12.6 of the Exposure Draft.

Clause 13.4: Grade 3 Racecourse Attendant

16. AFEI does not oppose the AWU's proposed change from '*hare driver*' to '*lure driver*'.

Clause 20: Allowances

17. AFEI considers the amendment sought by the AWU to introduce references to full-time, part-time and casual employees into Clause 20 of the Exposure Draft unnecessary.

Clause 20.2(d): Meal allowance

18. AFEI does not oppose the AWU's proposal to amend the meal allowance so it is consistent with the current award.

Travelling Shows Award 2016

Clause 18: Higher duties

19. AFEI agrees with the Showmen's Guild of Australasia's (SGA) proposed amendment to Clause 18 to change '*up to four hours*' to '*up to and including four hours*'. Please see Paragraph 19 of our submissions filed on 18 January 2017.

Clause 22.1: Sundays and public holidays – casual employees

20. We note the submissions of the SGA in relation to casual employees and public holidays, although it remains our view that the correct interpretation of Clause 23.4(b), which prior to the variation effective 22 August 2016 was 23.3(b), was that 23.4(a), formerly 23.3(a), ceased to apply on 31 December 2014.

21. As noted in AFEI's earlier submissions, the application of Clause 22.2 of the Exposure Draft (Clause 23.5 in the current award) to casual employees would amount to a substantial and unwarranted change to current award provisions, which AFEI opposes.

Car Parking Award 2016

Clause 11: Casual employment

22. AFEI does not support the submissions of the United Voice (**UV**) that the minimum engagement at Clause 11.6 applies to each separate period of work performed on the same day.

Clause 18.3(d): Accommodation allowance

23. AFEI considers the changes proposed for Clause 18.3 of the Exposure Draft would make no material difference. It is AFEI's view that an employee required to work away from home may not necessarily be required to *work* outside ordinary hours. The distinction between the minimum payments relates to whether the work carried out is ordinary time or outside ordinary time.

Clause 21.1(a) and (b): Shift allowances

24. AFEI opposes the UV's submissions. Shift penalties are not payable to shift workers for a period of work performed outside the shifts as defined. This is evident by the wording of Clause 23.5(a) in the current award and 21.1 of the Exposure Draft. The UV proposal would amount to substantial change to the current award.

Clause 23.3: Annual leave loading

25. AFEI does not support the UV interpretation that annual leave loading is calculated on an employee's wage inclusive of the first aid allowance.

Cemetery Industry Award 2016

Clause 15.2(a): All-purpose allowances

26. AFEI notes the submissions of Australian Business Industrial and the NSW Business Chamber (**ABI**) and the AWU that the industry allowance is an all-purpose allowance. We note also that the current award does not specifically provide that the industry allowance is an all-purpose allowance.

Clause 17.1(a): Payment for overtime

27. AFEI does not oppose the proposed amendment to Clause 17.1(a) to refer to Clause 12 to reflect the current award. We do not agree, however, with the AWU's comments that overtime is paid for all hours worked in excess of eight (8) hours per day. The current award permits averaging of 38 ordinary hours over a four week cycle.

Food, Beverage and Tobacco Manufacturing Award 2016

Clause 2: Definitions

28. AFEI agrees with Ai Group's submission regarding the definition of the '*ordinary hourly rate*'.
29. AFEI does not support the Australian Manufacturing Workers' Union's (AMWU) proposal to insert the term '*default fund employee*' as the term does not appear in the Exposure Draft or the current award.

Clause 7: Facilitative Provisions

30. AFEI agrees with Ai Group that agreements regarding annual leave in advance and cashing out of annual leave should not be included in a list of facilitative provisions.
31. AFEI agrees with Ai Group that Clause 32.5 should be in the table of facilitative provisions and that Clauses 12.5(a), 12.3(d) and 12.4(c) should replace Clauses 12.5, 12.3(c) and 12.4 (b), respectively. AFEI also agrees with the AMWU and the UV that the reference to Clause 22.9 in Clause 7.2(a) should be replaced with Clause 22.9(d) and with the UV that the reference to Clause 13.1 should be replaced by Clause 13.1(b).

Clause 8: Full-time employment

32. AFEI does not support the AWU's proposed definition of a full-time employee, being engaged for '*...up to 38 ordinary hours per week*'.

Clause 9.3: Part-time employment

33. AFEI does not support the AWU's proposal to introduce a new obligation on employers to inform employees in writing of changes in their classification and to extend the operation of this clause to full-time employees.
34. AFEI agrees with the AMWU that the language in the Exposure Draft should be consistent and would not oppose a change from the word '*commence*' to '*start*'.

Clause 10.1: Casual employment

35. AFEI does not support the AWU's proposal to amend Clause 10.1 to provide that a casual employee works less than 38 ordinary hours per week.

Clause 10.2(a): Casual employment

36. AFEI supports Ai Group's proposal to amend Clause 10.2(a) to insert the words '*minimum hourly rate*'.

Clause 12.1(b): Hours of work

37. AFEI supports Ai Group's submission to remove Clause 12.1(b) which does not appear in the current award.

Clause 12.2: Ordinary hours of work – day workers

38. AFEI agrees with Business SA and the UV that it is not necessary to define the term 'shiftworker' in the Exposure Draft.

Clause 14.1: Adult employee minimum wages

39. AFEI does not oppose Ai Group's proposal to delete the final column in the table at this clause or to insert the words '*full-time employee*' under the heading '*Annual wages*'.

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

40. AFEI does not oppose Ai Group's proposal to insert the word '*continue*' into the clause.

Clause 22.4: Saturday work – day worker

41. AFEI agrees with the submissions of Ai Group and the AMWU to reinsert words that have been deleted from the existing current award clause.

Clause 22.13: Transport of employees

42. AFEI does not oppose the AMWU's proposal to replace the words '*a conveyance*' with '*suitable transport*' as per the current award.

Clause 23.3(d): Rates for shiftworkers

43. AFEI agrees with Ai Group's submission that the new wording amounts to a substantive change from the current and that the existing wording should be retained.

Clause 24.5: Annual leave loading

44. AFEI agrees with Business SA that in order to determine the entitlement to annual leave loading the wages due to an employee over the whole period of annual leave, had they been at work, is compared with the wages they would receive had they received a loading of 17.5% over the entire period. AFEI opposes the alternative view of the AMWU and the AWU.

Schedule B: Summary of hourly rates of pay

45. AFEI does not oppose Ai Group's proposed changes to Schedule B at B.1.1, B.1.5, B.2.1 and B.2.3.

Funeral Industry Award 2016

Clause 14: Breaks

46. AFEI agrees with the submissions by ABI and the AWU that rest breaks are paid and that meal breaks are unpaid.

Clause 16.3(c): Uniform allowance

47. AFEI agrees with the submissions by ABI that the uniform allowance applies only to full-time employees.

Clause 18.6: Overtime for shiftworkers

48. AFEI agrees with the submissions by ABI that the clause should be amended to read '*applicable minimum hourly rate*'.

Clause 19: Overtime

49. AFEI does not support the AWU proposal that the minimum engagements for part-time and casual employees apply to overtime (and removals). It is AFEI's view that the more specific clauses referring to payment for overtime also apply to casual and part-time employees.

Clause 20: Penalty rates

50. AFEI agrees with ABI's submissions regarding Clause 20. The more specific clause referring to Saturday and Sunday work would override Clauses 10.5 and 11.3.

Pest Control Industry Award 2016

Clause 21: Shiftwork

51. AFEI's view is that the shift work penalties in Clause 21 apply to shift work, as distinct from day work which may extend beyond the day work span of hours and is compensated by overtime as contemplated in Clause 22.1 (a) of the current award.

Clause 22.3: Payment and loading

52. AFEI would agree with the AWU's submission that there is no industry allowance in this current award. However, AFEI does not support the AWU's submission that the leading hand allowance is an all-purpose allowance. The AWU's proposal would amount to a substantive change from the current award. AFEI is opposed to the AWU's proposed method of calculating annual leave loading, that is, 17.5% of the employee's minimum hourly rate plus the leading hand allowance plus the first aid allowance.

Professional Employees Award

Clause 4.1: Coverage

53. AFEI supports the submission of Ai Group that the reference to the award being an industry and occupational award should be deleted.

Clause 7: Facilitative provisions for flexible working practices

54. AFEI agrees with Ai Group's submission that Clause 13.7 should not be included in the list of facilitative provisions.
55. AFEI agrees with Ai Group that agreements regarding annual leave in advance and cashing out of annual leave should not be included in a list of facilitative provisions.

Clause 11.1(a): Casual employment

56. AFEI agrees with Ai Group's proposed amendments to this clause.

Clause 13.1: Ordinary hours of work

57. Whilst we note the submissions of other parties, we do not support proposals that would amount to a substantial change to the current award.

Clause 14.2: Calculation of minimum hourly rates

58. AFEI does not support the Association of Professional Engineers, Scientists and Managers Australia's (APESMA) proposal to amend the formula for calculating hourly rates.

Clause 15.3: Vehicle allowance

59. AFEI supports the Business SA and Ai Group proposals to retain the wording of the current award clause.

Clause 17.4 (a): Annual close-down

60. AFEI supports Ai Group's submissions in relation to the re-wording of this clause.

Schedule A.1.2: Graduate professional – appointment and progression

61. AFEI does not support APESMA's proposal that the entry rate for the holder of a 4 or 5-year degree should be Pay point 1.2. The current award already provides a higher minimum rate for an employee with a 4 or 5 year degree.

Dry Cleaning and Laundry Industry Award 2016

Table of Contents, Part 4

62. AFEI does not oppose the Textile, Clothing and Footwear Union of Australia's (TCFUA) proposal to amend the heading at Part 4 of the Exposure Draft and in the Table of Contents to include reference to superannuation.

Table of Contents, Part 5

63. AFEI does not oppose the TCFUA's proposal to amend the heading at Part 5 of the Exposure Draft and in the Table of Contents to '*Overtime and Penalty Rates*'.

Clause 7: Facilitative provisions

64. AFEI considers it is not necessary to depart from the standard wording at the opening sentence/s of Clause 7.2 of the Exposure Draft as suggested by the TCFUA.
65. AFEI does not oppose the TCFUA's proposal to relabel the Clause 14.9 facilitative provision to '*Ordinary hours of work – laundry workplaces – substitution of rostered days off*'.

Clause 13.1: Ordinary hours of work

66. AFEI opposes the submission by the AWU to amend Clause 13.1 to delete any referencing to averaging. The current award provides for averaging of ordinary hours at Clause 21.1(a) and 21.2(b). In this respect AFEI considers the Exposure Draft is consistent with the current award.

Clause 18.1: Minimum wages

67. AFEI does not oppose the submission by the TCFUA to delete the reference '*worked by the employee*' from the Exposure Draft although we consider this change unnecessary.

Clause 18.4 (d): Wages of apprentices

68. AFEI does not object to the AWU's proposal.

Clause 22.4(b): Rest period after overtime

69. AFEI prefers the wording of the Exposure Draft to that proposed by the AWU. AFEI considers the change proposed by the AWU to be unnecessary.

Clause 22.5: Recall to work overtime

70. AFEI opposes the submission of the AWU to delete the word '*from home*' at Clause 22.5 of the Exposure Draft. AFEI considers this a substantive change from the current award.

Clause 23.1: Saturday work

71. AFEI is of the view Clause 23.1(b) of the Exposure Draft properly reflects Clause 22.5(a)(ii) of the current award which outlines the interaction between shift premiums and the Saturday work penalty. The proposal by the AWU is a substantive change from the current award.

Clause 24.1(b): Morning shift – laundry

72. AFEI notes the AWU’s proposal to insert a span for commencing a morning shift or a reference to a finishing time for a morning shift. AFEI is concerned that this may result in a substantive change from the current award.

Clause 24.8: Shiftwork

73. AFEI does not oppose the TCFUA and AWU proposal that Clause 24.8 of the current award be retained.

Clause 35: Transfer to lower paid job on redundancy

74. The TCFUA has proposed to amend the title of this clause in the Exposure Draft to the current award wording of ‘*transfer to lower paid duties*’. AFEI does not consider this amendment necessary. AFEI further understands the Exposure Draft redundancy provisions appear to be consistent with the current approach adopted in the Full Bench plain language drafting of the same standard clauses.

Clause 36: Employee leaving during redundancy notice period

75. The TCFUA and AWU have submitted Clause 36 of the Exposure Draft should provide that an employee has an entitlement to not only redundancy pay but transfer to lower paid duties and job search entitlement when they have left during the redundancy notice period. AFEI does not consider this proposal necessary. The Exposure Draft is properly reflective of the entitlement under the current award. An employee will not be entitled to a transfer to lower paid duties or job search entitlement where they leave during the notice period and are no longer an employee of the employer.

Clause 37: Job search entitlement

76. AFEI does not oppose the TCFUA’s proposal to relocate the job search entitlement related to redundancy to *Clause 34 – Redundancy*.

Schedule C: C.1.2 and C.2.3 ‘non-rotating shifts’

77. AFEI does not oppose the TCFUA’s proposal to relabel rates identified as being for ‘non-rotating shifts’. This terminology does not otherwise appear in either the current award or the Exposure Draft.

Schedule C – C.2.4: Public holiday rates for laundry employees

78. AFEI does not oppose the TCFUA’s proposed amendment to the rates at C.2.4 for Laundry employee Level 1, 2 and 4, although AFEI considers the correct calculation for the Laundry employee Level 3 is 250% x \$19.38 (ordinary hourly rate for Laundry employee Level 3) = \$48.45.

Schedule C – C.3.1-C.3.4: Calculation of hourly rates of pay for casual employees

79. AFEI opposes the proposal by the TCFUA that shift premiums, overtime and penalties apply on the casually loaded rate. The casual loading is not expressed in the current award or Exposure Draft as applying for all-purposes. The Exposure Draft has correctly applied the casual loading, shift premiums, overtime and penalties on the base rate.

Fast Food Industry

Clause 15 - Breaks

80. AFEI supports the changes to the Exposure Draft proposed by Ai Group.

Clause 16: Minimum wage

81. AFEI does not agree with the AWU's or the Shop, Distributive and Allied Employees' Association's (**SDA**) submissions that the word '*adult*' should be removed from Clause 16.1. As Clause 16.2 deals with junior rates it is logical that the rates referred to in Clause 16.1 are expressly referred to as adult rates.

Clauses 21.1 and 21.2: Penalty rates

82. AFEI does not agree with the submissions of the SDA and the AWU that there is an issue with the wording of Clauses 21.1 and 21.2 of the Exposure Draft. The Exposure Draft does not change the methodology of calculating the casual loading. The Exposure Draft clarifies how penalties and loadings are to be calculated under the Award which is by '*accumulating*' as opposed to compounding.

Clause 21.3: Sunday Penalty rate and Clause 20.2 (b) Overtime

83. AFEI agrees with ABI's submission that Clause 21.3 deals with ordinary hours on a Sunday and Clause 20.2(b) deals with overtime hours on a Sunday. The 200% penalty for overtime hours should be paid in substitution of any penalty in Clause 21.3.
84. AFEI agrees with AiG's submission that the heading '*all employees*' at Clause 20.2(b) should not be used in the Exposure Draft. This wording does not appear in the current award.