

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission

casual and part-time employment
(AM2014/196 & AM2014/197)

6 October 2017

Ai
GROUP

**4 YEARLY REVIEW OF MODERN AWARDS – CASUAL
EMPLOYMENT & PART-TIME EMPLOYMENT (AM2014/196 &
AM214/197)**

**Ai GROUP SUBMISSION ADDRESSING THE FULL BENCH
DECISION OF 5 JULY 2017 - [2017] FWCFB 3541**

1. INTRODUCTION

1. Ai Group makes these submissions in response to elements of the Directions set out at paragraph 902 of the Full Bench Decision of 5 July 2017.¹
2. The submissions deal with the SDA's draft determinations filed on 20 July 2017 relating to the *General Retail Industry Award 2010*.
3. These submissions rely on the submissions filed by Ai Group on 4 August 2017.

2. The SDA PROPOSED DRAFT DETERMINATIONS

4. In response to the Full Bench's direction, the SDA has filed draft determinations that purport to give effect to the Commission's decision to extend an entitlement to overtime rates in the *General Retail Industry Award 2010* to casual employees.

Paragraph (c)

5. Paragraph (c) proposed by the SDA should be amended as follows:

Hours worked by casual employees in excess of 38 ordinary hours per week or, where the casual employee works in accordance with a roster, in excess of 38 ordinary hours per week averaged over the course of the roster cycle shall be paid at 175% of the ordinary hourly rate of pay for the first three hours and 225% of the ordinary hourly rate of pay thereafter (inclusive of the casual loading).

¹ [2017] FWCFB 3541

6. The insertion of the word “ordinary” is consistent with our understanding of the Commission’s decision and with the approach we have suggested in relation to the *Fast Food Industry Award 2010*, as set out in our submissions of 4 August 2017 at paragraphs [62] to [72].
7. Also, the SDA’s proposal does not make clear that the rates there set out include the casual loading, and this should be clarified.

Paragraph (d)

8. Paragraph (d) proposed by the SDA should be amended as follows:

Hours worked by casual employees outside the span of ordinary hours for each day specified in clause 27.2~~(2)~~ or outside the maximum ordinary hours in one day in clause 27.3 shall be paid at 175% of the ordinary hourly rate of pay for the first three hours and 225% of the ordinary hourly rate of pay thereafter (inclusive of the casual loading).

9. The insertion of the word “ordinary” is consistent with our understanding of the Commission’s decision and with the approach we have suggested in relation to the *Fast Food Industry Award 2010*.
10. The second amendment, i.e. to include a reference to clause 27.3, is to provide specific reference to the overtime provisions in the *General Retail Industry Award 2010*.
11. The third amendment is to address the problem that the SDA’s proposal does not make clear that the rates there set out include the casual loading.

Paragraph (e)

12. Paragraph (e) proposed by the SDA should be amended as follows:

Hours worked by casual employees in excess of 9 ordinary hours per day in accordance with clause 27.3 shall be paid at 175% of the ordinary hourly rate of pay for the first three hours and 225% of the ordinary rate of pay thereafter (inclusive of the casual loading), provided that for one day per week a casual employee may work 11 hours ~~in accordance with clause 27.3~~.

13. The insertion of the word “ordinary” is consistent with our understanding of the Commission’s decision and with the approach we have suggested in relation to the *Fast Food Industry Award 2010*.
14. The second amendment proposed is for the purposes of properly reflecting that clause 27.3 deals with the performance of 11 ordinary hours of work in a day, and not with the amount to be paid where a greater number of hours of work is performed.

Transitional Arrangements

15. The variations to be made by the Commission constitute significant new award obligations that create additional employment costs. Accordingly, we submit that the changes to be made should not commence for a period of six months.