

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission

AM2014/203 Graphic Arts, Printing
and Publishing Award 2010

10 December 2018

Ai
GROUP

4 YEARLY REVIEW OF MODERN AWARDS

AM2014/203 GRAPHIC ARTS, PRINTING AND PUBLISHING AWARD 2010

1. This submission is made in response to the 23 November 2018 *4 yearly review of modern awards – Award stage – Group 2*¹ (**November 2018 Decision**) of the Fair Work Commission (**Commission**).

2. In the November 2018 Decision, the Commission invited interested parties to file further submissions concerning the wording of the following clauses in the *Exposure Draft - Graphic Arts, Printing and Publishing Award* (**Exposure Draft**):
 - Clause 18.5

 - Clause 24.2(b)

 - Clause 24.3(a)

 - Clause 24.3(b)

 - Clause 24.4

 - Clause 31.3

 - Clause 31.4

3. This submission responds to the matters referred to in the following extract from the November 2018 Decision: (Emphasis added)

[9] In their submission of 12 October 2018, Ai Group refer to the clauses outlined at [5] above as the ‘impugned clauses’ and submit that they are not confined in their application to the performance of overtime by shiftworkers. In other words, they also apply to day workers. Ai Group submit:

‘We are concerned that by maintaining the references to ‘time and a half’, ‘double time’ and ‘double time and a half’ in the Exposure Draft, the Impugned Clauses may lend themselves to being interpreted to require the payment of an amount other than what is required by the Award during the

¹ [2018] FWCFB 7210

performance of ordinary hours and/or in relation to employees performing daywork. This is particularly so in circumstances where the Exposure Draft uses different terminology (i.e. the term 'ordinary hourly rate') in a number of other provisions.'

[10] Ai Group further submit they are concerned that our decision 'may inadvertently create uncertainty about how the impugned clauses apply to specific categories of employees or in certain circumstances and as a result, give rise to disputation as to their proper interpretation in such circumstances.'

[11] Ai Group then go on to submit that the definition of ordinary hourly rate which we outlined at [93] of the *September 2018 decision* be amended as follows:

'**ordinary hourly rate** means the hourly rate for the employee's classification ~~prescribed by the award specified in clause 8.2~~, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes'

[12] Ai Group further submit that the impugned clauses should be amended such that they required the calculation of the relevant penalty:

a) on a rate that includes the shift allowances prescribed by clause 21.3 of the Exposure Draft; and

b) on the 'ordinary hourly rate' in all other circumstances.

[13] Ai Group note that in the time frame they have not developed or proposed amendments to each of the impugned clauses.

[14] In light of the detailed submission made by Ai Group we propose to give all interested parties an opportunity to comment on the submission made by Ai Group. We will also provide Ai Group a further opportunity to file a written submission outlining their proposed amendments to each of the impugned clauses. All submissions in respect of these issues are to be filed by no later than **4.00pm on Monday 10 December 2018.**

[15] The issues raised by Ai Group will be the subject of a conference before the President at 10am on 20 December 2018 in Sydney. If the issues are not resolved at the conference they will be determined on the papers, absent any request for an oral hearing. Any such request must be made by no later than **4pm on Thursday 20 December 2018.**

4. At paragraph [7] of the decision, the Full Bench stated that the Commission did not intend to change entitlements as part of the drafting and technical stage of the Review process.
5. Proposed wording for each clause is set out below. The wording is aimed at preserving the current entitlements in the Graphic Arts Award, whilst ensuring that it is clear that the Award does not regulate over-award payments.

Clause in Exposure Draft	Clause in the current Award	Proposed wording	Explanation
<p>1.1.1 hourly rate means the weekly wage prescribed by this award for the work performed divided by the number of hours which constitute the employee's ordinary working week. In the event of an employee being employed on shiftwork the penalty payable for work at such hours will be part of the weekly wage of that employee.</p>	<p>3. hourly rate means the weekly wage prescribed by this award for the work performed divided by the number of hours which constitute the employee's ordinary working week. In the event of an employee being employed on shiftwork the penalty payable for work at such hours will be part of the weekly wage of that employee.</p>	<p>ordinary hourly rate means the hourly rate for the employee's classification <u>prescribed by the award</u>, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes</p> <p><u>overtime hourly rate</u> means the ordinary hourly rate for the employee's classification prescribed by the award, plus any applicable shift allowances.</p>	<p>A definition of "overtime hourly rate" has been added, which is referred to in relevant clauses below</p>
<p>21.3(c) The shift allowance is part of the employee's weekly wage for the purpose of calculating the overtime rate payable in accordance with this award.</p>	<p>31.3(c) The shift allowance is part of the employee's weekly wage for the purpose of calculating the overtime rate payable in accordance with this award.</p>		<p>This clause will not be necessary if the amendments proposed by Ai Group in this table are adopted.</p>
<p>18.5 If an employee is paid wages by cash and wages are not paid within ordinary working hours, all non-working time during which an employee is kept waiting for payment of wages will be paid at <u>time and a half</u>. The penalty in clause 18.5 will not apply where the delay is beyond the employer's control.</p>	<p>28.4 If an employee is paid wages by cash and wages are not paid within ordinary working hours, <u>time and one half</u> will be paid for all non-working time during which an employee is kept waiting for payment of wages except where the delay is beyond the employer's control.</p>	<p>18.5 If an employee is paid wages by cash and wages are not paid within ordinary working hours, all non-working time during which an employee is kept waiting for payment of wages will be paid at <u>150% of the ordinary hourly rate</u>. The penalty in clause 18.5 will not apply where the delay is beyond the employer's control.</p>	<p>The penalty in this clause is not an overtime penalty. Therefore, clause 31.3(c) in the existing award does not apply and there is no reason why the penalty should not be described as 150% of the ordinary hourly rate, consistent with the approach in most other awards.</p>

Clause in Exposure Draft	Clause in the current Award	Proposed wording	Explanation
<p>24.2(b) Overtime will be paid at the following rates:</p> <p>First three hours – <u>Time and a half</u></p> <p>After three hours – <u>Double time</u></p>	<p>33.2 All duty performed by an employee in excess of or outside the hours mentioned in clause 30 – Ordinary hours of work and rostering and clause 31 – Special provisions for shiftwork employees of this award, as the case may be, or in excess of the employee’s ordinary hours, will be overtime and will be paid at the rate of <u>time and one half</u> for the first three hours and <u>double time</u> thereafter.</p>	<p>24.2(b) Overtime will be paid at the following rates:</p> <p>First three hours – <u>150% of the overtime hourly rate</u></p> <p>After three hours – <u>200% of the overtime hourly rate</u></p>	<p>See definition of “overtime hourly rate” above.</p>
<p>24.3(a) An employee will be paid at the rate of <u>double time</u> for all overtime work done on a Saturday or on a Sunday, except as otherwise provided.</p>	<p>33.3(a) Except as otherwise provided, <u>double time</u> will be paid for all overtime work done on a Saturday or on a Sunday.</p>	<p>33.3(a) Except as otherwise provided, <u>200% of the overtime hourly rate</u> will be paid for all overtime work done on a Saturday or on a Sunday.</p>	<p>See definition of “overtime hourly rate” above.</p>
<p>24.3(b) An employee who has been notified by the employer of the requirement to work overtime on a Saturday (not being work which is continuous with work which commenced on a Friday) or on a Sunday and reports to work and is ready, willing and able to perform work, will be provided the following minimum engagements/payments at the rate of <u>double time</u>:</p> <p>(i) Saturday—two hours or two hours pay;</p> <p>(ii) Sunday—four hours or four hours pay.</p>	<p>33.3(b) A weekly employee who has been notified that the employee will be required to work overtime on a Saturday (not being work which is continuous with work which commenced on a Friday) or on a Sunday and so reports for work and is ready, willing and able to perform such work will be provided on a Saturday with at least two hours’ work or at least two hours’ pay at <u>double time</u> or on a Sunday with at least four hours’ work or at least four hours’ pay at <u>double time</u>.</p>	<p>24.3(b) An employee who has been notified by the employer of the requirement to work overtime on a Saturday (not being work which is continuous with work which commenced on a Friday) or on a Sunday and reports to work and is ready, willing and able to perform work, will be provided the following minimum engagements/payments at the rate of <u>200% of the overtime hourly rate</u>:</p> <p>(i) Saturday—two hours or two hours pay;</p> <p>(ii) Sunday—four hours or four hours pay.</p>	<p>See definition of “overtime hourly rate” above.</p>

Clause in Exposure Draft	Clause in the current Award	Proposed wording	Explanation
<p>24.4 Work on a rostered day off is overtime and is paid at the rate of <u>time and a half</u> for the first three hours and <u>double time</u> thereafter.</p>	<p>33.4 Work on a rostered day off is overtime and is paid at <u>time and one half</u> for the first three hours and <u>double time</u> thereafter.</p>	<p>24.4 Work on a rostered day off is overtime and is paid at the rate of <u>150% of the overtime hourly rate</u> for the first three hours and <u>200% of the overtime hourly rate</u> thereafter.</p>	<p>See definition of “overtime hourly rate” above.</p>
<p>31.3 An employee required to work on a public holiday or a substitute day, as provided for in the NES or clause 31.5, will be paid <u>double time and a half</u> with a minimum payment of four hours. Provided that:</p> <p>(a) an employee required as an inserter in a non-daily newspaper office who is required to work on a public holiday will be paid at <u>double time and a half</u> with a minimum payment of two hours; and</p> <p>(b) an employee engaged as a publishing employee in a non-daily newspaper office who is required to work on a public holiday will be paid at <u>double time and a half</u> with a minimum payment of three hours.</p>	<p>41.3 An employee required to work on a public holiday or a substitute day, as provided for in the NES or clause 41.5, will be paid <u>double time and a half</u> with a minimum payment of four hours. Provided that:</p> <p>(a) an employee required as an inserter in a non-daily newspaper office who is required to work on a public holiday will be paid at <u>double time and a half</u> with a minimum payment of two hours; and</p> <p>(b) an employee engaged as a publishing employee in a non-daily newspaper office who is required to work on a public holiday will be paid at <u>double time and a half</u> with a minimum payment of three hours.</p>	<p>31.3 An employee required to work on a public holiday or a substitute day, as provided for in the NES or clause 31.5, will be paid <u>as follows</u> with a minimum payment of four hours:</p> <p>For ordinary hours - <u>250% of the ordinary hourly rate;</u></p> <p>For overtime - <u>250% of the overtime hourly rate</u></p> <p>Provided that:</p> <p>(a) an employee required as an inserter in a non-daily newspaper office who is required to work on a public holiday will be paid <u>as follows</u> with a minimum payment of two hours:</p> <p>For ordinary hours - <u>250% of the ordinary hourly rate;</u></p> <p>For overtime - <u>250% of the overtime hourly rate</u></p> <p>(b) an employee engaged as a publishing employee in a non-daily newspaper office who is required to work on a public holiday will be paid <u>as follows</u> with a minimum payment of three hours:</p> <p>For ordinary hours - <u>250% of the ordinary hourly rate;</u></p> <p>For overtime - <u>250% of the overtime hourly rate</u></p>	<p>Under the current award, public holiday penalties are compounded on shift allowances only for overtime. Therefore, different rates need to be included for ordinary hours and overtime on a public holiday.</p> <p>See definition of “overtime hourly rate” above.</p>

Clause in Exposure Draft	Clause in the current Award	Proposed wording	Explanation
<p>31.4 Where a weekly employee in a non-daily or regional daily newspaper office, other than an employee listed in clauses 31.3(a) and 31.3(b), is required to work on a public holiday they will be given a day off instead within seven days of the holiday occurring or be paid <u>double time</u> with a minimum payment of four hours. Provided this clause applies instead of the provisions in clause 31.3.</p>	<p>41.4 Where a weekly employee in a non-daily or daily newspaper office, other than an employee listed in clauses 41.3(a) and 41.3(b), is required to work on a public holiday they will be given a day off instead within seven days of such holiday occurring or be paid <u>double time</u> with a minimum payment of four hours. Provided this clause applies instead of the provisions in clause 41.3.</p>	<p>31.4 Where a weekly employee in a non-daily or regional daily newspaper office, other than an employee listed in clauses 31.3(a) and 31.3(b), is required to work on a public holiday they will be given a day off instead within seven days of the holiday occurring or be paid <u>as follows</u> with a minimum payment of four hours:</p> <p>For ordinary hours - <u>250% of the ordinary hourly rate;</u></p> <p>For overtime - <u>250% of the overtime hourly rate</u></p> <p>Provided this clause applies instead of the provisions in clause 31.3.</p>	<p>See definition of “overtime hourly rate” above.</p>