



DRAFT REPORT TO THE FULL BENCH

Fair Work Act 2009
s.156 - 4 yearly review of modern awards

4 Yearly Review of Modern Awards: Various Awards (AM2014/217 and ors)

COMMISSIONER ROE

MELBOURNE, 12 MAY 2016

Four yearly Review of Modern Awards: Various Awards - Report to the Full Bench.

[1] This draft report provides an update of the Report of 2 May 2016 in light of the reply submissions received. The draft attempts to refer to all matters which are outstanding at this stage of the process. Parties are requested to provide their responses to the draft report either in advance of or at the conference listed for 11am on 19 May 2016. The relevant Awards are:

- AM2014/217 – *Banking, Finance and Insurance Award 2010*
- AM2014/218 – *Business Equipment Award 2010*
- AM2014/222 – *Contract Call Centres Award 2010*
- AM2014/221 – *Commercial Sales Award 2010*
- AM2014/242 – *Real Estate Industry Award 2010*
- AM2014/248 – *Telecommunications Services Award 2010*

[2] The matters arising from the earlier conferences and the draft report are dealt with in a revised summary of submissions report. A further revised exposure draft will be published after the 19 May 2016 conference.

GENERAL

1. The general submissions raised by AiGroup in Section 2.7 of the submission of 14 April 2016 re the Schedules summarising hourly rates of pay. This matter will be referred to the Full Bench.
2. The general matters raised in the ABI submission of 15 April 2016 at Section 2.1, 2.2, 2.3, 2.11 and 2.13 are being pursued by ABI noting that they do not intend to run an evidentiary or substantive case in support of the submissions.

BUSINESS EQUIPMENT AWARD 2010

1. Item 2: AiGroup proposal to vary the table of facilitative provisions in Clause 5.2. Following discussion at the conference on 29 April 2016 the next version of exposure draft will be varied to show in the table in Clause 5.2 that Clause 21.2 can be varied by an individual or the majority of employees. This matter is resolved.
2. Item 5 (and also Items 4 and 13) of the Summary of Submissions: AiGroup wish to pursue the issue of whether or not the “ordinary hourly rate” or the “minimum weekly

rate” should apply. This is an outstanding issue which will need to be referred to the Full Bench.

3. Item 14 and Item 62. Minimum hourly rate column has been inserted in exposure draft in response to various employer submissions. AiGroup do not support this. They point to commercial travellers stream where such employees are paid by reference to weekly or annual salary and to the exemptions which apply to salaried employees in clause 10.1. This concern may be able to be addressed through an appropriate note. The concern raised by AiGroup concerning the definition of ordinary hourly rate in Schedule H is overcome if the minimum hourly rate column is included in Clause 9, however, if it is not included then the definition will need to be amended which will also address Item 3.
4. Item 25 of Summary of Submissions: In respect to Clause 10.2 re exemptions for higher paid in clerical stream. FWC has proposed, for discussion, a possible amendment to the list of clauses and parties are requested to respond to this proposal by 16 May 2016. If there is consensus the proposal will be included in the exposure draft. This matter will be discussed at the conference on 19 May 2016.
5. Item 29 of Summary of Submissions: In respect to Clause 11.3(b)(i) definition of country territory. The proposal raised by ABI of 28 April 2016 will be further considered by the parties and any comments should be made by 16 May 2016. If there is consensus the ABI proposal will be included in the exposure draft. This matter will be discussed at the conference on 19 May 2016.
6. Item 34 of Summary of Submissions: Clause 11.4(c). Reference to State workers compensation will be deleted from the next version of the exposure draft. This matter is resolved.
7. Item 45: Clause 15.4 re daylight saving. ABI did not advise that they wish to pursue this matter in their reply submission.
8. Item 52: Clause 17.2(b) re annual leave loading. The words “of the ordinary hourly rate” will be deleted in Clause 17.2(b)(i) and (ii) in the next exposure draft. This matter is resolved.
9. Item 57: Schedule B. AMOD identified an error following the conference of 26 April 2016. Clause B1.1 needs to be properly formatted and the following sentence added: “Where an allowance is payable for all purposes in accordance with Clause 11.2, this forms part of the employee’s ordinary hourly rate and must be added to the minimum hourly rate prior to calculating penalties and overtime.” The second row of the table in B2.1 should be “% of ordinary hourly rate”. Clause B.1.2 should include an addition that “Consistent with Clause B.1.1, all purpose allowances need to be added to the rates in the table where they are applicable”. Changes will be reflected in the next version of the exposure draft.
10. Item 60: Clause B3.2 re Sunday 200% rate was further discussed at the conference on 29 April 2016. AiGroup and AFEI wish to pursue this matter further and have made further submissions in the reply submissions. This may be addressed further at the conference on 19 May 2016.
11. Item 46: ABI wish to pursue the addition of words “required to” in the context of performing overtime work. This is an outstanding issue which will need to be referred to the Full Bench.

12. The following are the outstanding items from the 24 February 2016 summary of variations document: Item 2 (referred to separate full bench AM2016/8), Item 1 re country territory (see Item 29 above).

BANKING, FINANCE AND INSURANCE AWARD 2010

1. Item 2 Summary of Submissions: Clause 3.1 Coverage. Although the amendments in the latest exposure draft are designed to ensure the status quo in respect to coverage, to avoid any doubt the next version of the exposure draft will restore the words in Clause 4.1 of the current award as proposed by the AiGroup, Business SA and AFEI. This should finalise this matter.
2. Item 16: Definition of shiftwork. AiGroup requests a further opportunity to consider the current exposure draft wording. It is hoped that AiGroup can respond at the 19 May 2016 conference.
3. Items 18 and 27 Summary of Submissions: AiGroup have advised that they wish to pursue the term loading rather than penalty in this case.
4. Item 21: Clause 9.1(a) AiGroup are proposing that “(full-time employees)” be added underneath “minimum weekly rate” and “minimum annual rate” in the table. AiGroup submit that this approach has been adopted in the revised exposure draft for the *Local Government Industry Award 2015*. It is proposed to adopt this amendment in the next version of the exposure draft.
5. Item 23: AFEI are seeking that Clause 11.2 be amended to specify that allowances are pro-rata for casual and part time employees. This is not consistent with the approach being taken in awards generally and could lead to unintended consequences if pro-rata is not specified in every relevant clause in an award.
6. Item 24: Clause 11.3(b)(ii) re the issue of standby or call back. Following further consideration at the conference on 29 April 2016, the amendment sought by AiGroup will be made to the next version of the exposure draft. This matter is resolved.
7. Item 29: Schedule H definition of minimum hourly rate. AiGroup submits that the definition inserted in the exposure draft is sub-optimal. The next version of the exposure draft will include the definition as proposed by the AiGroup “minimum hourly rate means the minimum weekly rate prescribed by Clause 9 divided by 38”. This will resolve the matter.
8. The following are the outstanding items from the 24 February 2016 summary of variations document: Item 1 (Part time/ Casuals Full Bench) and Item 4 Business SA (see also Item 14 of the summary of submissions document- this is a substantive item to change the hours when afternoon shift penalties apply).

COMMERCIAL SALES AWARD 2010

1. Item 4 of Summary of Submission: AiGroup and AFEI do not support the inclusion of definitions of “home” and “headquarters”. This will be discussed further at the conference on 19 May 2016.
2. Item 5 of Summary of Submissions: AiGroup and AFEI maintain their view that “full-time employees” should be inserted in brackets below minimum weekly rate in the table in Clause 10.1. It is proposed to adopt this amendment in the next version of the exposure draft.
3. Item 11 of Summary of Submissions. AiGroup and AFEI do not agree that there is consensus to remove “in soliciting orders” from Clause 16.3. This will be discussed further at the conference on 19 May 2016.

4. The following are the outstanding items from the 24 February 2016 summary of variations document: Items 1 and 2 (referred to annual leave full bench).

CONTRACT CALL CENTRES AWARD 2010

1. Item 3: AiGroup maintain their view that the words “who do the same work” should be removed from Clause 6.3(a)(iii). AiGroup seek a further change to the exposure draft of this clause to restrict to award derived entitlements. The following is suggested to resolve this matter: “receives on a pro-rata basis, award pay and conditions equivalent to those of full-time employees in the same classification.” This matter will be further discussed at the conference on 19 May 2016.
2. Item 5: Clause 8.1. AiGroup have provided further details in reply submissions re Section 147 issue. This will be discussed at the 19 May 2016 conference.
3. Item 12: Clause 13.1.ABI proposal. Following further discussion at the conference on 29 April 2016, the next exposure draft will include a note against the “ordinary hours worked” in the table that “the spread of ordinary hours is defined in Clauses 8.6 and 8.8. This matter is resolved.
4. Item 16: Clause 14 overtime. ABI proposal. The clause relates to the daily or weekly number of hours and not to the spread of hours. No change is required to the exposure draft. This matter is resolved.
5. Item 24: AiGroup proposal re annual leave (Item 2 in summary of proposed variations). Following discussion at the 29 April 2016 conference it was agreed that the next version of the exposure draft will include the AiGroup proposed amendment to Clause 15.3 (correspondence of the 28 April 2016) with the addition of the introductory words in the current draft, “Instead of the base rate of pay as referred to in s. 90(1) of the Act”. The words “of the minimum hourly rate” in Clause 15.4(a) will be deleted. This matter is resolved.
6. Item 34: The use of the expression “outside the spread of ordinary hours” has inadvertently not been inserted in B.1.1 but it has been inserted in B.2.1. The correction will be made in the next version of the exposure draft.
7. Item 38: B.2.3 the exposure draft has now removed the 25% loading for casuals on overtime. There was no contrary reply submission received.
8. Item 39: AiGroup has suggested a slight variation to the definition of minimum hourly rate to ensure that it applies to junior employees as well as adult employees. The correction will be made in the next version of the exposure draft.
9. Parties are encouraged to discuss the CPSU trainer proposal (item 3 in summary of proposed variations). If requested a further conference may be convened.
10. The following are the outstanding items from the 24 February 2016 summary of variations document: Item 1 (referred to separate full bench), Item 3 (see point 1 above), Item 4 re annual salaries.

REAL ESTATE INDUSTRY AWARD 2010

1. No exposure drafting issues outstanding (a revised exposure draft has been published which reflects the matters agreed at the conference of 26 April 2016).
2. Outstanding variation proposals have been referred to a separate Full Bench.

TELECOMMUNICATIONS SERVICES AWARD 2010

1. Item 2: AiGroup press their submission that the words “who do the same work” be deleted from Clause 6.3(a)(iv). They are also concerned that the exposure draft provision does not make it clear that part time workers receive pro-rata award conditions. They suggest that without these words overaward conditions might also be implied. The following is suggested to resolve this matter: “receives on a pro-rata basis, award pay and conditions equivalent to those of full-time employees in the same classification on the basis that ordinary weekly hours for full-time employees are 38.” The AiGroup also raise in respect to Clause 6.3(a)(iii) that because a part time worker can work additional hours on a day up to the equivalent of an equivalent full time employee without the payment of overtime rates, the restriction to “ordinary hours worked” is problematic. AiGroup propose to replace the words “ordinary hours worked” with “work performed.” We propose to make this amendment in the next exposure draft. AiGroup also propose to insert the word “However” at the beginning of Clause 6.3(b)(ii). We propose to make this amendment in the next exposure draft. This matter will be further discussed at the 19 May 2016 conference.
2. Item 3: ABI advised in the reply submissions that they wish to pursue this matter. This is an outstanding matter which will need to be dealt with by a Full Bench.
3. Item 7: AiGroup have advised that they wish to pursue this matter to replace ordinary hourly rate” with “minimum hourly rate”. This is an outstanding matter which will need to be dealt with by a Full Bench.
4. Item 9: Clause 8.1: AiGroup has provided further details in their Contract Call Centre Award submission in respect to Section 147 issues. This will be discussed at the 19 May 2016 conference.
5. Item 11: Daylight saving. ABI did not advise that they wished to pursue this matter further in their reply submissions.
6. Item 12: The next version of the exposure draft will include a table of rates in Schedule B for casuals overtime and those rates will be as per B.2.4 for full time and part time employees. No reply submissions opposed this approach.
7. Item 15: AiGroup are proposing that “(full-time employees)” be added underneath “minimum weekly rate” in the table. AiGroup submit that this approach has been adopted in the revised exposure draft for the *Local Government Industry Award 2015*. It is proposed to adopt this amendment in the next version of the exposure draft.
8. Item 26: AiGroup remained concerned at the implications of the move from a 30% loading to 130% of the ordinary hourly rate (etc). AiGroup submits that the removal of the word “penalty” in Clause 14.2(a) has not resolved the matter. This will be further considered at the 19 May 2016 conference.
9. Item 28: Clause 15.5(b) re part time exclusion from 10 hour break. Following further discussion at the conference on 29 April 2016 it was agreed that the next version of the exposure draft will include the part time exclusion consistent with the current Award. This matter is resolved.
10. Item 31: AiGroup proposal re annual leave (Item 2 in summary of proposed variations). Following discussion at the 29 April 2016 conference it was agreed that

the next version of the exposure draft will include the AiGroup proposed amendment to Clause 16.3(a) (correspondence of 28 April 2016) with the addition of the introductory words in the current draft, “Instead of the base rate of pay as referred to in s. 90(1) of the Act”. The proposed variation to Clause 16.3(b) will not be included. This matter is resolved.

11. Item 34: Parties are encouraged to discuss the CPSU trainer proposal (Item 1 in summary of proposed variations). If requested a further conference may be convened.
12. Schedule B: Changes were made to the schedule in response to the issues raised by the AiGroup. Although it was not discussed at the 29 April 2016 conference, the AMOD team have further considered the appropriate tables in Schedule B. We now consider that the best way to resolve the AiGroup concern about the lack of distinction in the Award between day worker and shiftworker is to combine the tables for shiftworker and day worker. Also Clause B.1.2 should include an addition that “Consistent with Clause B.1.1, all purpose allowances need to be added to the rates in the table where they are applicable”. Changes will be reflected in the next version of the exposure draft.
13. The following are the outstanding items from the 24 February 2016 summary of variations document: Item 1 re trainer classification (see above).

COMMISSIONER