



Australian Federation of Employers and Industries (AFEI)

Submission pursuant to Amended Directions of the
Fair Work Commission on 23 March 2016 concerning Group 3
Exposure Draft awards: AM2014/217 and others

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15 April 2016

1. The following submissions are made pursuant to Amended Directions of the Fair Work Commission (the Commission) on 23 March 2016 concerning Group 3 Exposure Draft awards.

Commercial Sales Award

Clause 9.5: Payment of wages

2. The note relating to the Fair Work Regulations is unnecessary and may cause confusion for an employer and employee about whether the note is a term of the Award and could result in duplication of penalties for any breach.

Clause 10.2(f)(i) Expenses and accommodation reimbursement

3. In this clause the terminology 'in the discharge of the duties' in the current award should be retained instead of the exposure draft terms 'in the course of their employment.'

In response to questions in Exposure Draft:

Clause 8: Breaks

4. The term 'regular and normal' involves minimal prescription of the length and timing of the unpaid meal break, which is appropriate to the dynamic nature of the work performed by an employee covered by this Award.

Clause 10.2(a): Weekend allowance

5. 'Headquarters' has a specific meaning, and does not have the same meaning as an employee's 'usual place of residence.' The two distinct terms 'home' and 'headquarters' ought to be retained.

Clause 10.2(b): Living away from home allowance

6. The allowances are paid for distinct purposes, and are not cumulative. If such allowances were cumulative, this would appear to result in an unintended duplication of an expense allowance for weekends.

Clause 16.3: Public Holidays

7. The payment of 250% of the minimum hourly rate is inclusive of compensation for a 'paid day' of work. As this payment at 250% is able to be substituted to an equivalent 'two and a half days' leave,' it is clearly in full compensation for the public holiday. Where an employee elects to take the leave instead of payment at the penalty rate, this cannot not to result in an employee receiving a greater entitlement.

Horticulture Award

In response to questions in the Exposure Draft:

Clause 9.2: Rest breaks

8. Employees working afternoon and night shift would each be entitled to one paid rest break in Clause 9.2(a) of the exposure draft. For further clarity, the words 'each morning' could be amended to 'each shift.'

Clause 10.2: Pieceworkers

9. There has been no evidence to indicate an example of piecework would be necessary in order for those in the industry to understand the operation of the 'piecework' clause.
10. When taking annual leave, a pieceworker receives payment in accordance with the rates they would have received had they instead been paid in accordance with the minimum wages provision in Clause 10.

Clause 10.3: Juniors

11. AFEI does not oppose the rounding rules for junior wages being deleted from the Exposure Draft.

Clause 11.2: All-purpose allowances

12. AFEI agrees with the structuring of the exposure draft – which identifies the all-purpose allowances as leading hand, wet-work, and first aid.

Miscellaneous Award

In response to questions in the Exposure Draft:

Clause 7.1(d): Classifications

13. The meaning of a 'sub-professional' does not appear to have been contentious and does not require a definition.

Educational Services (Schools) General Staff Award 2015

Clause 10.2(d)(ii) – Broken shifts

14. This clause of the Exposure Draft features a substantive change from the current Award.
15. Clause 10.2(d)(ii) of the Exposure Draft provides that an employee working a broken shift is entitled to *'the appropriate penalty in clause 15.4 with a minimum payment as for two hours for each period of duty'*. Clause 25.3 of the current Award, reflected in clause 15.4 of the Exposure Draft, excludes casual employees from this penalty rate and the two hour minimum payment for each period of duty.
16. AFEI submits that Clause 10.2(d)(ii) of the Exposure Draft should be amended to clarify that the penalty and minimum payment in clause 15.4 applies to employees other than casual employees.

Clause 16.3 – Reasonable additional hours – part-time employees

17. The heading in Clause 16.3(a) appears to have inadvertently limited reasonable additional hours to part-time employees whose hours are averaged (excluding part-time employees whose hours are not averaged). Without rectification, this would involve a substantial change from Clause 22.4 of the current Award. AFEI submits that the Exposure Draft should be amended to remove the heading of 16.3(a).

Wine Industry Award 2016

In response to questions in the Exposure Draft:

Clause 20.9 – Transfer of business

18. AFEI does not oppose the removal of Clause 20.9 Transfer of Business from the exposure draft.

Real Estate Industry Award 2015

Schedule G: Definition of 'Real Estate Industry'

19. 'Real Estate Industry' is unnecessarily defined twice in the Exposure Draft. AFEI submits that the definition of real estate industry be removed from Schedule G, as it is now included in Clause 3.

In response to questions in the Exposure Draft:

Clause 8.3: Junior employees

20. If 'at 18 years' did not include employees younger than 18 years, a 17 year old employee covered by the Award could earn 40% more than an 18 year old by receiving the adult rate of pay.

Clause 9.7(c): Commission only employment

21. The term 'real estate sales' does not appear to have been contentious, and would therefore not appear to require a definition.

Legal Services Award 2015

Schedule G: Definition of Legal Services Industry

22. Legal Services Industry is unnecessarily defined twice in the Award. We submit the definition of legal services industry be removed from Schedule G, as it is now included in clause 3.

In response to questions in the Exposure Draft:

23. The Commission has asked whether Clauses 13.4(c)(ii) and 13.4(c)(iii) are inconsistent. Clause 13.4(c)(ii) provides that where a shift starts the day before a public holiday and extends into a public holiday, the employee will receive the public holiday rate for the whole shift. Clause 13.4(c)(iii) clarifies that in such a situation (as contemplated in Clause 13.4(c)(ii), the employee will only receive the public holiday rate for the shift if the majority of the shift falls on the public holiday. The wording of this clause could be clearer. AFEI propose the following wording for Clause 13.4(c)(iii):

'Notwithstanding Clause 13.4(c)(ii), a person will only be entitled to the public holiday rate for a shift if the majority of the shift falls on the public holiday.'

Gardening and Landscaping Services Award 2016

In response to questions in the Exposure Draft:

Clause 6.4(a)(b) – Part-time employees

24. Clause 6.4(b) of the Exposure Draft substantially changes the current Clause 10.3(b). By removing the word "regular part-time employee" the Exposure Draft may require agreements on patterns on work for *all* part-time employees rather than just regular part-time employees.

Clause 10.2(b) – Juniors

25. AFEI does not oppose the rounding rules for junior wages being deleted from the Exposure Draft.

Clause 11.3(ii) Leading hand allowance

26. The leading hand allowance is paid as an additional amount, rather than an amount that becomes inclusive in an employee's wage such as an all-purpose allowance.

Nursery Award 2016

Clause 6.4(i)(ii) – Part-time employees rosters

27. This clause in the exposure draft involves a substantive change from clause 10.3(i)(ii) in the current Award. It provides that the rostered hours of part-time employees may only be altered 'subject to clause 24.2'. This phrase is not in the same clause as the current Award, and imposes an additional burden on the employer.
28. Clause 24.2 of the Exposure Draft reflects the current standard consultation clause, which requires the employer to consult with employees about proposed changes to rosters or hours of work. Under the current award, there is no requirement to consult with part-time employees when rostered hours are changed by mutual agreement. The requirement to consult would only arise where the employer intends to require an employee to change their roster or hours of work.

In response to questions in the Exposure Draft:

Clause 3.3 – Meaning of nursery industry

29. Rather than refer to the coverage provisions of the Wine, Silviculture and Sugar Awards, which may be narrower than the industry/occupation itself, Clauses 3.3(b) through 3.3(d) ought to include wording consistent with Clause 3.3(a). For example, Clause 3.3(b) would refer to 'the wine industry as defined in the *Wine Industry Award 2016*.'

Clause 13.1 – All-purpose allowances

30. AFEI is not opposed to classifying the meal, tool and equipment and travelling allowances as 'expense related allowances', rather than all-purpose allowances. This is consistent with the approach adopted in other modern awards.

Pastoral Award 2016

All-purpose allowance – leading hand allowance

31. AFEI notes that the exposure draft expresses the precise amount per week payable for the applicable leading hand allowance. However, in AFEI's view the full weekly amount only applies to full-time employees with part-time employees entitled to the leading-hand allowance on a pro rata basis.
32. Accordingly, it may be misleading to express the full weekly amount of the leading hand allowance as applying to all employees.

Clerks - Private Sector Award 2015

In response to questions in the Exposure Draft:

Clause 9.1(a): Unpaid meal breaks

33. The meal break provisions in clause 9.1(a) don't apply to Shiftworkers, as Shiftworkers have a separate entitlement to a paid meal break in clause 14.4(e).

Clause 13.4(b)(i): 10 hour break

34. AFEI agrees that the words 'the end of the employee's ordinary hours' should instead be 'end of overtime.'

Clause 14.1: Shiftwork

35. A definition of 'shiftworker' is not necessary. The award is already clear about when shift allowances apply.

Labour Market Assistance Industry Award 2015

Definition of full-time employment

36. In clause 6.3 of the exposure draft a full-time employee is defined as working '38 ordinary hours or an average of 38 ordinary hours per week' while the current award provides that a full-time employee is defined as working '38 hours per week or an average of 38 hours per week'.
37. To avoid a substantive change to the current award AFEI submits that the wording in clause 10.2 of the current award should be retained.

How ordinary hours are worked

In response to questions in the Exposure Draft:

Clause 14.1(c)(iii): Part time employees

38. AFEI do not oppose the amendment being proposed by the Fair Work Commission to correct the typographical error in clause 14.1(c)(iii).

Business Equipment Award 2015

In response to questions in the Exposure Draft:

Clause 15: Special provisions for shiftworkers

39. A definition of shiftworker is not required.

Banking, Finance and Insurance Award 2015

In response to questions in the Exposure Draft:

Clause 7.7(d): Shiftwork penalties

40. The shiftwork penalty payable on a Saturday is sufficiently clear in the Exposure Draft.

Clause 9.4: School-based apprentices

41. As there are no apprentices provisions in the award, the school based apprentices schedule should be deleted.

Sporting Organisation award

Clause 10.2(b): Junior employees

42. The current award provides that junior employees are paid according to their age, a percentage of the Grade 1 or Grade 2 rate. This means that these rates are applicable irrespective of the level of the work being performed. Once the employee has completed 12 months service and is aged 18 or over, their rate becomes the appropriate adult rate. The Exposure Draft should reflect the wording of the current award.

Contract Call Centres Award 2015

In response to questions in the Exposure Draft:

Clause 3.4

43. The reference to apprentices in Clause 3.4 is unnecessary.