

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission

Finalisation of exposure drafts
- Tranche 2
(AM2019/17)

2 March 2020

Ai
GROUP

4 YEARLY REVIEW OF MODERN AWARDS FINALISATION OF EXPOSURE DRAFTS – TRANCHE 2

1. INTRODUCTION

1. The Australian Industry Group (**Ai Group**) files this submission in response to paragraphs [13] and [95] of the decision of the Fair Work Commission (**Commission**) dated 14 February 2020¹ (**February Decision**) and the draft determinations issued by the Commission on the same date in relation to the following ‘Tranche 2’ awards:
 - a) *Clerks - Private Sector Award* (**Clerks Award**); and
 - b) *Manufacturing and Associated Industries and Occupations Award* (**Manufacturing Award**).

2. CLERKS – PRIVATE SECTOR AWARD

2. Clause 18.1(a) should provide for an annualised wage arrangement to encompass penalties applicable when an employee is required to work through a meal break (clause 15.4). These are appropriately considered to be ‘Overtime penalty rates’, as referred to in clause X.1(a)(iii).

¹ [2020] FWCFB 690.

3. MANUFACTURING AWARD

Annualised wage arrangement clause and minimum wage rates for supervisors, trainers and coordinators

3. The Commission has expressed the intent that the new annualised wage arrangement clauses will cover the provisions listed in clause X.1(a)(i)-(v) of each model term, together with any additional provisions covered by the existing annualised salary clause in the relevant award.²
4. Clause 24.1(g) of the Manufacturing Award, as it applied prior to 1 March 2020, provided that the terms the employer and a Supervisor/Trainer/Coordinator - Levels I or II could address through an annualised salary were:
 - (a) Minimum wages;
 - (b) Overtime rates;
 - (c) Penalty rates;
 - (d) Allowances;
 - (e) Leave loadings; and
 - (f) Payment of wages.
5. Clause 28.2(a) in the Draft Determination does not reflect the full range of provisions that could be encompassed within an annualised wage arrangement under clause 24.1(g) of the pre-1 March 2020 provision.
6. In addition, in the negotiations between Ai Group and the AMWU regarding the incorporation of the vehicle manufacturing provisions from the Vehicle Award into the Manufacturing Award, it was agreed that the annualised salary clause would apply to supervisors, trainers and coordinators in the Vehicle Manufacturing sector covered by clause 4.8(a)(xi). Evidence of this agreement

² [2019] FWCFB 1289 at [54] and [61]; [2019] FWCFB 4368 at [25].

can be seen in the fact that the annualised salary clause in the draft provisions jointly proposed by Ai Group and the AMWU does not contain a provision stating that the clause does not apply to Vehicle Manufacturing employees covered by clause 4.8(a)(xi), like other provisions in the body of the award which are not intended to apply to such employees.

7. To address the above matters, the following provisions need to be added to clause 28.2(a):

- Clause 17.2(e) – Penalty rate for ordinary hours worked outside spread of hours – day workers;
- Clause 17.2(f) – Weekend penalty rates for ordinary hours – day workers;
- Clause 17.2(g) – Public holiday penalty rates for ordinary hours – day workers;
- Clause 18.5(b) – Penalty rate for work done during meal breaks;
- Clause 19.4 – Ship trial penalty rates;
- Clause 26 – Extra rates not cumulative;
- Clause 33.1 – Penalty rates for day workers;
- Clause 40.5(a) – Compensation where a rostered day off falls on a public holiday;
- Clause 53 – Allowances and related matters – vehicle manufacturing employees;
- Clause 55 – Shiftwork and rates – vehicle manufacturing employees; and
- Clause 56 – Overtime – vehicle manufacturing employees.

8. With regard to the first question in the green text box in clause 20 and the questions in the green text boxes in clauses 28, 30 and 32 of the Draft Determination, the application of the annualised wage arrangement clause to vehicle manufacturing employees will be adequately addressed through the amendments to clause 28.2(a) proposed above.
9. With regard to the second question in the green text box in clause 20, the cross-references in clause 20.1(d)(iv), should be:
 - (iv) an employee covered by clauses 20.1(f), (g), **or 28 and or 30.2(f)**.
10. The supervisors, trainers and coordinators covered by clause 28 are different supervisors, trainers and coordinators to those covered by clause 30.2(f). Clause 28 applies to Supervisor/Trainer/ Coordinator—Level I and II, whereas clause 30.2(f) applies to Supervisor/ Trainer/Coordinator—Technical, which is a different classification.
11. This can be seen by the following three classifications in clause A.3.3 of Schedule A:

A.3.3 Supervisor/Trainer/Coordinator

Where an employee is performing supervisory responsibilities, the employee is to be classified as a:

- (a) Supervisor/Trainer/Coordinator—Level I: **122%** of the minimum wage rate paid to the highest technically qualified employee supervised or trained subject to clause 20.1(g)(i).
- (b) Supervisor/Trainer/Coordinator—Level II: **115%** of the minimum wage rate paid to the highest paid employee supervised or trained subject to clause 20.1(g)(ii).
- (c) Supervisor/Trainer/Coordinator—Technical: **107%** of the minimum wage rate applicable to the employee's technical classification.

12. The 122% and 115% rates referred to in clause A.3.3(a) and (b) are the following rates in clause 20.1(g).

(g) Supervisor/Trainer/Coordinator—Levels I and II

- (i) The minimum hourly rate for a Supervisor/Trainer/Coordinator—Level I is 122% of the minimum hourly rate paid to the highest technically qualified employee supervised or trained or 104.3% of the standard rate per hour, whichever is the higher.
 - (ii) The minimum hourly rate for a Supervisor/Trainer/Coordinator—Level II is 115% of the minimum hourly rate paid to the highest paid employee supervised or trained or 113.1% of the standard rate per hour, whichever is the higher.
13. The 107% rate referred to in clause A.3.3(c) is the “allowance” in clause 30.2(f):

(f) Supervisor/Trainer/Coordinator—Technical allowance

- (i) A Supervisor/Trainer/Coordinator—Technical, who is responsible primarily for the exercise of skills in the technical field up to the level of their skill and competence and who is additionally involved in the supervision/training of other technical employees must be paid not less than 107% of the minimum wage rate applicable to the employee’s technical classification.
 - (ii) This allowance will be paid for all purposes of this award.
14. Users of the award are alerted to the above ‘allowance’ by the following provision in clause 20.1(h):

A Supervisor/Trainer/Coordinator—Technical is paid an allowance in accordance with clause 30.2(f).

15. There would be merit in the following minor amendment to reduce the scope for confusion about the minimum wage rates that are payable to supervisors, trainers and coordinators:

A Supervisor/Trainer/Coordinator—Technical is paid an allowance in accordance with clause 30.2(f), **instead of the rates in clause 20.1(g).**

16. The previous annualised salaries clause in the Manufacturing Award only applied to Supervisor/Trainer/Coordinator – Levels I and II. It did not apply to Supervisor/Trainer/Coordinator – Technical. As clause 28 is currently drafted in the Draft Determination, it only applies to Supervisor/Trainer/Coordinator – Levels I and II.

17. Therefore, returning to the cross-references in clause 20.1(d)(iv), it makes no sense to refer to clauses “28 and 30.2(f)” because there are no employees covered by both clause 28 and clause 30.2(f), for the reasons explained above. The clause should be amended as follows:

(iv) an employee covered by clauses 20.1(f), (g), **or 28 and or** 30.2(f).

National Training Wage Schedule

18. The following amendment needs to be made to the heading of Table 3 in clause G.4.1(c)(ii) in Schedule G of the Manufacturing Award to correct an error:

- (ii) The minimum rate for a full-time adult trainee undertaking an AQF Certificate Level IV traineeship is the weekly rate specified in column 2 or 3 of **Table 3—Minimum weekly rate for full-time adult trainees (AQF Certificate Level IV traineeship)** according to the year of the traineeship specified in those columns and the relevant wage level for the relevant AQF Certificate Level III traineeship specified in column 1:

Table 3—Minimum weekly rate for full-time adult trainees (AQF Certificate Level ~~III~~ IV traineeship)