

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission

Finalisation of Exposure Drafts –
Tranche 3
(AM2019/17)

**Graphic Arts, Printing and
Publishing Award**

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Ai
GROUP

4 YEARLY REVIEW OF MODERN AWARDS
FINALISATION OF EXPOSURE DRAFTS – TRANCHE 3
GRAPHIC ARTS, PRINTING AND PUBLISHING AWARD

1. INTRODUCTION

1. The Australian Industry Group (**Ai Group**) seeks leave to file this submission to address what we submit is an unintended and unfair consequence that will result from the wording in the latest exposure draft of the *Graphic Arts, Printing and Publishing Award (Exposure Draft)* concerning the penalties payable to shift workers who work overtime on a public holiday.
2. Ai Group has only just become aware of the problem with the wording in the Exposure Draft through queries raised by member companies.
3. Unless the problem is addressed before the new version of the award comes into operation, employers will be required to pay shift workers who work overtime on a public holiday a rate of up to 325% of the ordinary rate, rather 250% of the ordinary rate, as currently applies. This would be unfair and unjust and hence inconsistent with ss.3(b), 134 and 577 of the *Fair Work Act 2009*.

2. PROPOSED AMENDMENT TO THE EXPOSURE DRAFT

4. We propose the following amendment to the wording in the Exposure Draft:

37.3 An employee required to work on a public holiday or a substitute day, as provided for in the NES or clause 37.5, will be paid as follows with a minimum payment of 4 hours:

For ordinary hours	250% of the ordinary hourly rate
For overtime	250% of the overtime <u>ordinary</u> hourly rate

Provided that:

- (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 as follows with a minimum payment of 2 hours:

For ordinary hours	250% of the ordinary hourly rate
For overtime	250% of the overtime <u>ordinary</u> hourly rate

- (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 as follows with a minimum payment of 3 hours:

For ordinary hours	250% of the ordinary hourly rate
For overtime	250% of the overtime <u>ordinary</u> hourly rate

- 37.4** Where a weekly employee in a non-daily or regional daily newspaper office, other than an employee listed in clauses 37.3(a) and 37.3(b), is required to work on a public holiday they will be given a day off instead within 7 days of the holiday occurring or be paid as follows with a minimum payment of 4 hours:

For ordinary hours	250% of the ordinary hourly rate
For overtime	250% of the overtime <u>ordinary</u> hourly rate

Provided clause 37.4 applies instead of the provisions in clause 37.3.

5. The above amendments reflect the relevant entitlements under the *Graphic Arts, Printing and Publishing Award 2010 (GA Award 2010)*, and the relevant entitlements in the *Graphic Arts - General - Award 2000 (GA Award 2000)* – the pre-modern award upon which the terms of the GA Award 2010 were based .

3. RELEVANT PROVISIONS IN THE GA AWARD 2000 AND RELEVANT AWARD MODERNISATION DEVELOPMENTS

6. The terms of the GA Award 2010 were based on those in the GA Award 2000 and were the subject of a significant degree of agreement between Ai Group, the Printing Industries Association of Australia (**PIAA**), Country Press Australia (**CPA**) and the AMWU, as referred to in the following extract from the Australian Industrial Relations Commission's (**AIRC's**) *Stage 2 Award Modernisation Statement* [2009] AIRCFB 50: (emphasis added)

Graphic arts group

[69] On the basis of materials currently before us we are not persuaded that it would be appropriate to incorporate the graphics arts and printing industries into the Manufacturing Modern Award. We publish an exposure draft of a *Graphic Arts, Printing, Publishing and Associated Industries and Occupations Award 2010*. The exposure draft, if made an award, will replace two federal awards in the graphic arts industry and nine

federal awards and 20 NAPSAs in the printing industry. The draft reflects a significant degree of agreement between the major interested parties.

[70] The coverage clause reflects the current *Graphic Arts—General—Award 2000* (Graphic Arts Award) circumstance of both industry and occupational coverage. We are not entirely persuaded that this should pertain in the future and invite further submissions on the issue. While plastics manufacturing is included in the coverage clause, reflecting current circumstances, it is restricted by reference to the printing element involved in manufacturing. We are not currently persuaded that references in current classification definitions to aspects of web design are sufficient for us to include provision for web development/design in the coverage clause.

Relevant provisions in the GA Award 2000

7. Clause 7.5.8 of the GA Award 2000 relevantly stated: (emphasis added)

7.5.8 Work on a public holiday

7.5.8(a) An employee who has been notified that the employee will be required to work on a public holiday or a substitute public holiday in accordance with 7.5.3, and reports for work and is ready willing and able to perform the work of which the employee has been notified will be provided with at least four hours work or at least four hours pay at the rate prescribed by this subclause.

7.5.8(b) A full-time employee will be paid at the rate of double time and a half for all work done on a public holiday. Where a regular part-time employee works on the holiday, such employee will be paid in accordance with this clause. A casual employee will be paid at the same rate as a weekly employee, with the addition of 25%. This extra rate is in substitution for and not cumulative on the shift allowances prescribed in 6.2.3 and the penalty rates in 6.1.1(d), 6.1.2(d), 6.1.3(f), 6.1.6 and 6.4.

8. The last sentence in clause 7.5.8(b) of the Award made it very clear that shift allowances did not load on top of the double time and a half rate for time worked on a public holiday. However, even without this clarifying sentence the intent is reflected in the following wording of clause 6.2.3(c) of the Award: (emphasis added)

6.2.3(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.

9. The overtime rates in the Award were found in clause 6.4 – Overtime. This clause did not contain an overtime rate for work on a public holiday. It simply referred the reader to the fact that the rate for work carried out on a public holiday was dealt with in subclause 7.5.8 of clause 7.5 – Public Holiday Entitlement:

6.4.5 Work on a public holiday

An employee required to work on a public holiday will be paid pursuant to 7.5.8.

10. Clause 7.5.8 is reproduced in paragraph 7 of this submission. It can be seen that this clause does not provide an “overtime rate”, but simply a rate for all work carried out on a public holiday.

Relevant provisions in the Joint Party Draft Award submitted to the AIRC during the award modernisation process

11. During the 2008-09 award modernisation process, Ai Group, PIAA, CPA and the AMWU jointly submitted a [draft award](#) to the AIRC on 27 November 2018: (**Joint Party Draft Award**).
12. The following subclauses 33.3 and 33.4 in the Joint Party Draft Award, which address the payments for time worked on public holidays, was agreed upon between the parties:
 - 33.3** An employee required to work on a public holiday or a substitute day as provided for in clause 33.5 and 33.6 hereof will be paid double time and a half with a minimum payment of four hours. Provided that:
 - (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 double time and a half with a minimum payment of two hours; and
 - (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 double time and a half with a minimum payment of three hours; and
 - 33.4** In lieu of clause 33.3 where a weekly employee in a non daily newspaper office is required to work on a public holiday he /she will be given a day off in lieu within seven days of such holiday occurring or paid double time for the time worked.
13. The following clause 24.3(c) in the Joint Party Draft Award was also agreed upon between the parties: (emphasis added)
 - (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.

14. However, similar to the GA Award 2000, the overtime clause in the Joint Party Draft Award (clause 26) did not contain any overtime rate for work carried out on a public holiday. It simply referred the reader to the fact that the rate for work carried out on a public holiday was dealt with in clause 33 – Public Holidays:

26.5 Work on a public holiday

An employee required to work on a public holiday will be paid at the rate prescribed in clause 33.

15. The relevant provisions in clause 33 (i.e. subclauses 33.3 and 33.4) are reproduced in paragraph 12 of this submission. It can be seen that clause 33 does not provide an “overtime rate”, but simply a rate for all work carried out on a public holiday.

Relevant provisions in the GA Award 2010

16. The relevant provisions in the GA Award 2010 are very similar to those in the Joint Party Draft Award.
17. The following subclauses 41.3 and 41.4 in the GA Award 2010 are not materially different to clauses 33.3 and 33.4 in the Joint Party Draft Award:

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 double time and a half with a minimum payment of four hours. Provided that:

- (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 double time and a half with a minimum payment of two hours; and
- (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 double time and a half with a minimum payment of three hours.

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 double time with a minimum payment of four hours. Provided this clause applies instead of the provisions in clause 41.3.

18. Also, the following clause 31.3(c) in the GA Award 2010 is identical to clause 24.3(c) in the Joint Party Draft Award: (emphasis added)

(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.

19. Further, similar to the GA Award 2000 and the Joint Party Draft Award, the overtime clause (clause 33) in the GA Award 2000 does not contain any overtime rate for work carried out on a public holiday. It simply refers the reader to the fact that the rate for work carried out on a public holiday is dealt with in clause 41 – Public Holidays:

33.5 Work on a public holiday

An employee required to work on a public holiday will be paid at the rate prescribed in clause 41—Public holidays.

20. The relevant provisions in clause 41 (i.e. subclauses 41.3 and 41.4) are reproduced above. It can be seen that clause 41 does not provide an “overtime rate”, but simply a rate for all work carried out on a public holiday.

4. CONCLUSION

21. We submit that the above developments and relevant award provisions conclusively demonstrate that the following amendments should be made to the Exposure Draft to avoid imposing a very substantial and unfair cost increase upon employers:

37.3 An employee required to work on a public holiday or a substitute day, as provided for in the NES or clause 37.5, will be paid as follows with a minimum payment of 4 hours:

For ordinary hours	250% of the ordinary hourly rate
For overtime	250% of the overtime <u>ordinary</u> hourly rate

Provided that:

(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 as follows with a minimum payment of 2 hours:

For ordinary hours	250% of the ordinary hourly rate
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For overtime 250% of the ~~overtime~~ ordinary hourly rate

- (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 as follows with a minimum payment of 3 hours:

For ordinary hours 250% of the ordinary hourly rate

For overtime 250% of the ~~overtime~~ ordinary hourly rate

- 37.4** Where a weekly employee in a non-daily or regional daily newspaper office, other than an employee listed in clauses 37.3(a) and 37.3(b), is required to work on a public holiday they will be given a day off instead within 7 days of the holiday occurring or be paid as follows with a minimum payment of 4 hours:

For ordinary hours 250% of the ordinary hourly rate

For overtime 250% of the ~~overtime~~ ordinary hourly rate

Provided clause 37.4 applies instead of the provisions in clause 37.3.

22. The present entitlement of a shift worker who works overtime on a public holiday is 250% of the ordinary time rate. As currently drafted, the provisions of the Exposure Draft would result in the following penalties for overtime worked by a shift worker on a public holiday, which would be very unfair for employers:

Morning Shift Worker 300% (i.e. 120% x 2.5)

Afternoon Shift Worker 300% (i.e. 120% x 2.5)

Rotating Night Shift Worker 300% (i.e. 120% x 2.5)

Permanent Night Shift Worker 325% (i.e. 130% x 2.5)