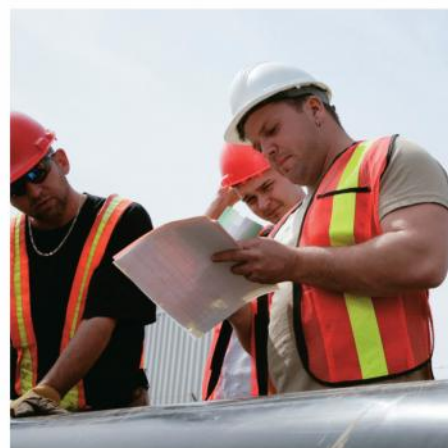


Submission of the Australian Industry Group

13 November 2014

**4 Yearly Review of Awards – Award Flexibility and Public Holidays
(AM2014/300, AM2014/301)**



1. Introduction

1. The Australian Industry Group (**Ai Group**) submits this Outline of Issues pursuant to the Statement of President Ross of 6 November 2014.
2. By way of summary, Ai Group submits that:
 - Flexibility in modern awards, for both employers and employees is important in ensuring that modern awards and the National Employment Standards provide a fair and relevant safety net.
 - There are some awards that do not contain appropriate flexibility provisions and do not currently meet the modern awards objective.
 - Award provisions allowing for time off in lieu of overtime and for make-up time are an important and established flexibility necessary to achieve the modern awards objective.
 - If the *Fair Work Amendment Bill 2014* passes through Parliament the model flexibility clause in awards should be reviewed to determine whether any changes should be made to the clause.

2. Time off in lieu of overtime

3. Award clauses enabling an employer and employee to agree to take time off in lieu of overtime are very common but not included in all modern awards. These clauses provide important flexibilities for employees and employers in virtually all industries and occupations covered by modern awards.
4. The variation that Ai Group is seeking is the insertion of the model clause determined by the Australian Industrial Relations Commission (AIRC) in the *Family Leave Test Case - Stage 1 November 1994 Decision* [Print L6900, p.41].

5. The 1994 *Family Leave Test Case* arose from an ACTU application seeking additional family leave and flexibility to assist workers to reconcile their work and family responsibilities.
6. After considering extensive submissions and materials, the Commission determined a package of award conditions that assisted workers better balance their work and family responsibilities while creating flexibilities within the award system and minimising costs to employers.
7. The package included new employee entitlements such as carer's leave, but also an award term for employees to elect to take time off in lieu of overtime, if agreed with their employer. The model test case clause in respect of time off in lieu of overtime was:

“Time off in Lieu of Payment for Overtime

- (a) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.*
 - (b) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.*
 - (c) An employer shall, if requested by an employee, provide payment, at the rate provided for the payment of overtime in the award, for any overtime worked under paragraph (c) of this subclause where such time has not been taken within four weeks of accrual.”*
8. In settling the orders for the time off in lieu of overtime clause, then Vice President Ross concluded:

“..the approach adopted will assist employees in reconciling their employment and family responsibilities while maintaining an incentive to bargain and introducing greater flexibility into the award system”
(Print L9048, p.10).

9. Ai Group proposes that the above test case clause be inserted into the modern awards identified in **Schedule 1**.

3. Make-up Time

10. An award provision enabling an employer and employee to agree to work ‘make-up time’ for a time taken off during ordinary hours is an important flexibility for the modern award safety net.
11. Such provisions complement time off in lieu of overtime provisions.
12. The following make-up time provision is proposed, as appears in clause 36.7 of the *Manufacturing and Associated Industries and Occupations Award 2010*:

“(a) An employee may elect, with the consent of the employer, to work make up time under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in this award.

(b) An employee on shiftwork may elect, with the consent of their employer, to work make up time under which the employee takes time off during ordinary hours and works those hours at a later time, at the rate which would have been applicable to the hours taken off.”

13. Ai Group seeks the inclusion of the above make-up time provision in the awards listed in **Schedule 2**.

4. Award Flexibility Clause

14. If the *Fair Work Amendment Bill 2014* passes through Parliament the model flexibility clause in awards should be reviewed to determine whether any changes should be made to the clause, for example, to highlight the need to prepare a genuine needs statement”.

**Modern awards proposed to be varied to insert the time of in lieu of
overtime clause**

Air Pilots Award 2010
Aircraft Cabin Crew Award 2010
Alpine Resorts Award 2010
Aquaculture Industry Award 2010
Black Coal Mining Industry Award 2010
Building & Construction General On-Site Award
Business Equipment Award 2010
Coal Export Terminals Award 2010
Concrete Products Award 2010
Cotton Ginning Award 2010
Dredging Industry Award 2010
Electrical Power Industry Award 2010
Horse & Greyhound Training Industry Award 2010
Joinery & Building Trades Award 2010
Miscellaneous Award 2010
Nursery Award 2010
Pest Control Industry Award 2010
Pharmaceutical Industry Award 2010
Plumbing & Fire Sprinkler Award 2010
Poultry Processing Award 2010
Road Transport (Long Distance Operations) Award 2010
Seagoing Industry Award 2010
Security Services Industry Award 2010
Silviculture Award 2010
Stevedoring Industry Award 2010

Modern awards proposed to be varied to insert the make-up time clause

Air Pilots Award 2010
Aircraft Cabin Crew Award 2010
Airline Operations Ground Staff Award 2010
Ambulance & Patient Transport Industry Award 2010
Asphalt Industry Award 2010
Black Coal Mining Industry Award 2010
Building & Construction General On-Site Award
Business Equipment Award 2010
Cement & Lime Award 2010
Cleaning Services Award 2010
Coal Export Terminals Award 2010
Commercial Sales Award 2010
Concrete Products Award 2010
Cotton Ginning Award 2010
Dredging Industry Award 2010
Dry Cleaning & Laundry Industry Award 2010
Electrical Power Industry Award 2010
Electrical, Electronic & Communications Contracting Award 2010
Fast Food Industry Award 2010
Gas Industry Award 2010
General Retail Industry Award 2010
Health Professionals & Support Services Award 2010
Silviculture Award 2010
Stevedoring Industry Award 2010
Sugar Industry Award 2010
Textile, Clothing, Footwear & Associated Industries Award 2010
Water Industry Award 2010
Wool, Storage, Sampling & Testing Award 2010