

Australian Industry Group

# 4 YEARLY REVIEW OF MODERN AWARDS

**Submission**  
Group 3 Exposure Drafts

**24 November 2017**

**Ai**  
GROUP

# 4 YEARLY REVIEW OF MODERN AWARDS

## GROUP 3 EXPOSURE DRAFTS

### 1. INTRODUCTION

1. The Australian Industry Group (**Ai Group**) files this submission in response to the decision<sup>1</sup> issued by the Fair Work Commission (**Commission**) on 30 October 2017 regarding certain awards allocated to group 3 in the current 4 yearly review of modern awards. Specifically, this submission relates to the *Horticulture Award 2010* and the *Wine Industry Award 2010*.

### 2. HORTICULTURE AWARD 2010

#### Schedule G – Definitions – ordinary hourly rate

2. The 'ordinary hourly rate' is defined in the *Exposure Draft – Horticulture Award 2015*<sup>2</sup> with reference to the hourly rates specified in clauses 10.1(a) and 10.3(a). Those clauses prescribe the minimum hourly rates payable to adult employees and junior employees.
3. The proposed definition of 'ordinary hourly rate' does not, however, have regard to employees who are, for instance, trainees to whom the National Training Wage Schedule applies or those under the Supported Wage System. As a result:
  - It is not clear how the definition applies to employees to whom clauses 10.1(a) and 10.3(a) are not relevant; and/or
  - The definition would potentially increase the entitlements due to such employees.

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<sup>1</sup> 4 yearly review of modern awards – Award stage – Group 3 [2017] FWCFB 5536.

<sup>2</sup> Published 2 November 2017.

4. Accordingly, we submit that the definition should be amended as follows:

**ordinary hourly rate** means the hourly rate for the employee's classification specified in this award ~~clause 10.1(a) and 10.3(a)~~, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes

### **3. WINE INDUSTRY AWARD 2010**

5. The submissions that follow refer to the summary of submissions published on 10 October 2017 and the *Exposure Draft – Wine Industry Award 2015* published on 2 November 2017.

#### **Items 17 – 24: Casual conversion**

6. We note that the above items remain outstanding as they were deferred pending the outcome of the casual and part-time employment common issues proceedings. The relevant Full Bench has since issued its decision and has concluded that existing casual conversion provisions will not be varied.<sup>3</sup>
7. Accordingly, we respectfully submit that it is appropriate that the Commission now give consideration to whether the current casual conversion clause has been properly redrafted in the *Exposure Draft – Wine Industry Award 2015*, having regard to the various submissions made by interested parties in this regard.

#### **Items 25 and 30 – 32: Ordinary hours of work**

8. We are concerned that the renumbering of provisions under clause 8 has resulted in an anomaly arising from the most recent version of the exposure draft. Specifically, it is our submission that:
  - Clauses 8.2 – 8.5 apply to day workers and shiftworkers;
  - Clause 8.6 applies only to day workers; and
  - Clauses 8.7 – 8.9 apply to day workers and shiftworkers.

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<sup>3</sup> 4 *yearly review of modern awards – Casual employment and Part-time employment* [2017] FWCFCB 3541 at [368].

9. The text inserted at clause 8.1 does not reflect this position, which we understand to be broadly agreed between interested parties who participated in the conferencing process before Deputy President Clancy.