

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Reply Submission – exposure draft

Local Government Industry Award 2010

(AM2014/234)

26 APRIL 2016

Ai
GROUP

1. INTRODUCTION

1. On 2 November 2015, the Fair Work Commission (Commission) published [directions](#) in respect of all awards allocated to groups 3 and 4 of the award stage of the 4 yearly review of modern awards (Review). Specifically, parties were directed to file:
 - Comprehensive written submissions on the technical and drafting issues related to exposure drafts in Group 3 by 10 March 2016. This deadline was subsequently [extended](#) to 14 April 2016.
 - Comprehensive written submissions in reply on the technical and drafting issues related to exposure drafts in Group 3 by 7 April 2016. This deadline was subsequently [extended](#) to 5 May 2016.
2. As outlined in a statement¹ issued by His Honour, Justice Ross on 23 March 2016, the Commission will thereafter publish summaries of the parties' submissions on 20 May 2016. Hearings in respect of drafting and technical issues related to group 3 exposure drafts have been set down for 6 and 7 June 2016.
3. The Australian Industry Group (Ai Group) filed a [submission](#) dated 14 April 2016 in respect of 15 group 3 exposure drafts. This includes the *Exposure Draft – Local Government Industry Award 2015* (Exposure Draft).
4. On 5 April 2016, a notice of listing was issued for a conference before Commissioner Johns in relation to the Review of the *Local Government Industry Award 2010* (Local Government Award or Award). That conference is to be held on 27 April 2016. Ai Group intends to attend the conference.
5. We understand that substantive claims made to vary the Local Government Award have been heard and determined by the Commission. Accordingly, it would appear that any outstanding issues relate only to the Exposure Draft. We therefore proceed on the basis that matters pertaining to the Exposure Draft may be the subject of discussion during the conference.

¹ [2016] FWC 1838.

6. Whilst submissions in reply regarding the Exposure Draft are not required to be filed until 5 May 2016, for the purposes of the conference to be held on 27 April 2016, we here provide a response to submissions filed by the following parties:

- The Australian Services Union (ASU), dated 14 April 2016; and
- The Local Government Associations (LGA) dated 14 April 2016.

Clause 6.5(c)(ii) – Penalties and overtime

7. We agree with the LGA submission that the example contained in the Exposure Draft properly represents the methodology to be adopted in calculating penalty rates due to a casual employee. That is, the penalty and the casual loading are to be added together, rather than compounded.

Clause 10.5(d)(ix) – Annual salary not to disadvantage employee

8. We agree with the LGA's submission that the reference to 'accident make up pay' should be deleted. We refer to paragraph 372 of our submissions dated 14 April 2016 in this regard.

9. Given that accident make up pay is no longer an award entitlement the provision appears to be otiose and, contrary to the ASU's submissions, should be deleted.

Clause 10.6(b) – Higher duties

10. We agree with the LGA submission regarding the question at clause 10.6(b) of the Exposure Draft. On a public holiday, an employee is entitled to the rate of pay prescribed by the award for the classification to which they are ordinarily assigned pursuant to clause 7.2. The employee is *not* entitled to a higher rate of pay under clause 10.6(a). This is made clear by the exclusion for relieving employees who are absent on a public holiday at clause 10.6(b).

Clause 11.4(b)(ii) – Excess travelling time and fares

11. We do not oppose the LGA submission regarding the question contained at clause 11.4(b)(ii) of the Exposure Draft. We note that neither the LGA nor ASU have sought a variation to the provision and submit that the clause need not be amended. The current terms are sufficiently clear as to the rate of pay that applies.

Clause 18.3 – Observed public holiday

12. We do not oppose the LGA submissions regarding the question contained at clause 18.3 of the Exposure Draft.

Clause 18.5 – Public holiday occurring on a rostered day off

13. We do not oppose the LGA submissions regarding the question contained at clause 18.5 of the Exposure Draft.