

FAIR WORK ACT 2009 (Cth)
s. 159 – Four Yearly Review of Modern Awards
DRAFTING and TECHNICAL ISSUES
PLUMBING and FIRE SPRINKLERS AWARD 2016
EXPOSURE AWARD (AM2014/280)
MODERN AWARD REVIEW
SUBMISSION

This is a submission by Fire Protection Association Australia in connection with the Plumbing and Fire Sprinklers Award 2016 – Exposure Award.

INTRODUCTION

1. On 10th May 2016, the President, His Justice Ross, issued a Statement and Directions ([2016] FWC 2924) setting out an amended timetable with respect to the 4 yearly review of Group 4 awards identifying with a plain language pilot.
2. The amended Timetable invited interested parties to make submissions on drafting and technical issues with respect to Group 4 exposure draft awards by 30th June 2016.
3. Fire Protection Association Australia (FPA) makes a submission with respect to the Plumbing and Fire Sprinklers Award 2016 – exposure award (“Exposure Award”).
4. The Exposure Award was released on 26th May 2016 and included a comparison with the existing the Plumbing and Fire Sprinklers Award 2010 (“Existing Award”). The exposure draft does not seek to amend any entitlements but raises a number of structural issues.
5. Matters raised in the Exposure Award cover specific Award conditions as well as matters currently before the Fair Work Commission that will affect more than just Group 4 awards.
6. The broader matters before the Fair Work Commission such as Annual Leave (AM2014/47 – subject of decisions including those of 23rd May 2016 and 24th June 2016); Part-Time Employment (AM2014/196); Casual Employment (AM2014/197); Overtime (AM2014/300) and Public Holidays (AM2014/301) – are acknowledged as matters that can affect the Plumbing and Fire Sprinklers Award.
7. Notwithstanding the importance of these broader Award matters, which are of significant interest to FPA, this submission focuses on the specific Award conditions.

8. It is also noted that the 4 yearly modern award review is intended, pursuant to modern award objective (section 134) of the Fair Work Act 2009 (Cth), *to take into account the need to ensure a simple, easy to understand, stable and sustainable modern system (... that avoids unnecessary overlap of modern awards)* (s. 134 (1) (g)). Also, as the headnote of various Decisions of the Commission indicate a reference to plain language of modern awards. This submission supports those principles.

SPECIFIC AWARD PROVISIONS

9. Turning to the specific Award matters raised in the Exposure Award.

Facilitative provisions (and Ordinary Hours)

10. Commencing with clause 7 – Facilitative provisions for flexible working practices and referring to sub-clause 15.3 (Early Start), the Exposure draft asks “whether clause 15.3 – early start should specify ‘a majority of employee’”?
11. The Table in sub-clause 7.2 identifies with sub-clause 15.3 and summarises respective provisions which in the case of “Early Start” indicates that such an arrangement is by agreement between an employer and “The employees”.
12. Sub-clause 15.3 – Early start – relevantly states “(a) *By agreement between the employer and its employees, the working day may begin at 6.00am or at any time between that hour and 8.00am and the working time will then begin to run from the time so fixed*”.
13. A number of scenarios may exist which may affect the application of this provisions. For example, one scenario could be a situation which depends on the size of the Employer and/or the size of the job in question. If the job is a one person job, then the question is immaterial.
14. If on the other hand, the job involves more than 3 employees, for instance, then the position of majority of employees involved in the proposed early start and/or whether the job/task may be applied.
15. If the situation is that of an emergency, then the employer should be able to use his managerial right to have the job performed.
16. However, an individual employee’s circumstances should also be taken into account and could influence an early start and so in such circumstances may also affect an Employer’s managerial rights.
17. It is submitted that this question cannot be answered in a singular manner as at least 4 different scenarios can arise: single employee; more than 3 employees; emergency situation where the Employer’s right to issue a legal and reasonable instruction arises; as well as an individual employee’s circumstances on a particular occasion.

18. The Award should be varied to reflect a mix of circumstances.

Adult Apprentices

19. The referred to provision with respect to sub-paragraph 13.14 (d) (ii) and question is whether the employment of adult apprentices should be at the expense of other apprentices?
20. Based on the provisions of sub-paragraph 13.14 (d) (i), sub-paragraph 13.14 (d) (ii) is a logical progression and so the provision should be retained.

Overtime

21. The parties are asked whether 2 Overtime meal breaks provisions (sub-clauses 16.5 – Overtime rest breaks and 16.6 – Overtime meal breaks) currently contained within clause 16 – Breaks, are better positioned in Clause 21 – Overtime?
22. Sub-clause 16.6, in particular, refers to Overtime rates and so there appears to be some merit for such a transition.
23. Note that sub-clause 21.3 is already placed in Clause 21 – Overtime.
24. Based on the current Award provision at sub-clause 21.3 – Working during meal break – it may therefore be appropriate to move exposure draft sub-clause 16.5 and 16.6 to clause 21 – Overtime.

Payment of Wages

25. The Parties are asked whether the payment of wages clause should specify that payment by electronic means is an acceptable payment of wages method.
26. Yes, and the following clause is proposed: *“18.8 (a) All wages, allowances and other monies must be paid in cash, cheque, ~~bank cheque, bank or similar transfer~~ or electronic fund transfer”*.
27. The proposed clause provides for a variety of options and the reference to “cheque” and “electronic fund transfer” up-dates the current words/method of payments of “bank or similar transfer”.

Allowances

28. At paragraph 20.3 (f) – industry disability allowance and space, height and dirt money allowance – fire sprinkler fitter employees – the exposure draft asks whether the allowance in clause 20.3(f) is only payable to adults.

29. The answer is yes. The 2 allowances are only payable to adult fire sprinkler fitter employees. This is the wording that introduces the provision that is set out in the Table that follows. It is very clear.

30. In addition, as the intention of the Exposure Awards is towards plain language, then there should be clarity and clear identification of the meaning of a “sprinkler fitter employee”.

31. It is therefore proposed that the following definitions be inserted into the Award:

“Sprinkler fitter employee” employee means an Employee (both trade and non-trade) covered by this Award including junior and adult apprentices;

“Adult sprinkler fitter employee” means an Employee covered by this Award who is not a junior employee (non-trade) or a junior apprentice.

Shift Work

32. The Existing Award implies shift work. However, there is no specific shift work clause provided for in the Award. Some examples appear at sub-clause 22.2 – shift work (allowances); clause 23 – Annual Leave – paragraph 23.2 (b) – reference to “continuous shift worker” and in turn to Clause 2 – Definitions.

33. It is obvious that shift work is worked in the industries of plumbing and fire protection. The scope of which, however, may vary from rare (in the case of small businesses) to perhaps substantial for bigger companies.

34. Therefore a proposition is put to consider the benefits or otherwise of a “shift work’ clause in the Award.

Apprentice Rates

35. At Schedule B.3, the Parties are asked to confirm clause references to confirm the inclusion of the Fire sprinkler fitting trade allowance in the Table for apprentices and adult apprentices. Clauses 18.2(b)(iii), 18.2(c)(iii) and 18.3(a)(iii) do not refer to this allowance.

36. The allowance is entitled “Trade”. These employees are not tradesmen.

37. The Allowance is not payable to apprentices and adult apprentices.

Additional

38. Clause 2 – Definitions – “Fire Technician” – further to Decision of the Fair Work Commission {2013} FWC 2838, to complete the definition of “fire technician” with the inclusion of “routine maintenance / inspection & testing activities as described under AS1851”.

CONCLUSION

39. As indicated in the introductory paragraph to the Exposure Award, the exposure award/draft (and repeated above), is not intended to amend any entitlements under the Existing Award.
 40. It is recognised that the Exposure Award and the Existing Award are similarly structured with regards to Award content and thereby complying with the intent of the Exposure draft.
 41. However, what should not be forgotten is the intention of plain language and simplicity of provisions to allow for clear interpretation and understanding of respective provisions.
 42. That simplicity of award provisions is reflected in the proposition that there be a separation of “shift work” from the current “Ordinary hours of work” clause. Such a proposition would not only confirm consistency with the Fair Work Act in providing for a more user friendly document, but would also address the relevant questions raised by the exposure draft.
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