

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission

Finalisation of Exposure Drafts -
Tranche 1
(AM2019/17)

9 December 2019

Ai
GROUP

4 YEARLY REVIEW OF MODERN AWARDS

AM2019/17 FINALISATION OF EXPOSURE DRAFTS – TRANCHE 1

1. INTRODUCTION

1. The Australian Industry Group (**Ai Group**) files this submission in response to paragraph [61] of the decision of the Fair Work Commission (**Commission**) dated 25 November 2019 (**November Decision**)¹ and the determinations issued by the Commission on the same date in relation to the ‘Tranche 1’ awards.
2. The November Decision dealt with a number of additional amendments made to the draft variation determinations previously published in respect of ‘Tranche 1’ awards. This submission relates to the following awards to which such changes were made:
 - (a) *Aluminium Industry Award 2020*;
 - (b) *Cement, Lime and Quarrying Award 2020*;
 - (c) *Cotton Ginning Award 2020*; and
 - (d) *Electrical Power Industry Award 2020*
3. In addition, we note that the changes made to the terminology used to describe rates of pay in the new awards do not resolve concerns we have previously raised and which were considered in an earlier decision of the Commission² about the interaction between annual leave loading provisions and other clauses which prescribe, for example, shift and weekend rates.³

¹ [2019] FWCFB 7854.

² *4 yearly review of modern awards—Plain language project* [2019] FWCFB 5409 at [146] – [153].

³ Awards affected include the *Aluminium Industry Award 2020*; *Banking, Finance and Insurance Award 2020*; *Cement, Lime and Quarrying Award 2010*; *Electrical Power Award 2020*; *Legal Services Award 2020*; *Premixed Concrete Award 2020* and the *Seafood Processing Award 2020*.

4. We are concerned that if the relevant issue is not determined and consequential variations to address the issue are not made to the new awards before 4 February 2020, the annual leave loading clauses in those awards may be ambiguous, their operation may be uncertain and / or their operation may have a substantive and unintended impact on employees' entitlements under those provisions. We identify this matter for the consideration of the Full Bench but do not raise any associated objections in relation to the relevant variation determinations, given that we understand that the issue is to be the subject of a further decision of the Full Bench.⁴

2. ALUMINIUM INDUSTRY AWARD 2020

Clause C.1.1

5. We note that the final sentence of the preamble to the table states (emphasis added):

These rates are to be paid in accordance with clause 18 – Allowances.

6. The monetary amounts referred to in the table at C.1.1 are not rates of pay. They are allowances. We propose that the Commission amend the sentence to read:

These ~~rates~~ allowances are to be paid in accordance with clause 18 – Allowances.

3. CEMENT, LIME AND QUARRYING AWARD 2020

Clause 4.4

7. Clause 4.4 has been amended by replacing “cement and lime and quarrying industry” with “cement and lime industry and quarrying industry”⁵. As a result, the award will be expressed to apply to an employer that supplies labour on an on-hire basis in the cement and lime industry and the quarrying industry. If an employer supplies labour to the cement and lime industry only, or to the quarrying industry only, they would appear to be excluded from the coverage of the award.

⁴ 4 *yearly review of modern awards—Plain language project* [2019] FWCFB 5409 at [53].

⁵ November Decision at footnote 12.

8. We do not understand this to be the intent of the provision; rather, the clause is intended to ensure that any employer supplying labour on an on-hire basis under the *Cement and Lime Award 2010* and / or the *Quarrying Award 2010* is to be covered by the new amalgamated award.
9. To make this clear, clause 4.4 should be amended as follows:

This award covers an employer which supplies labour on an on-hire basis in the cement and lime industry and / or the quarrying industry in respect of ...

Clause 4.5

10. A similar issue arises in respect of clause 4.5⁶. On one view, it purports to extend the coverage of the award only to employers who provide group training services for trainees engaged in the cement and lime industry and the quarrying industry.
11. In addition, the clause refers to “parts of that industry”, even though the clause refers to two distinct and separately defined industries.⁷
12. Accordingly, clause 4.5 should be amended as follows:

This award covers employers which provide group training services for trainees engaged in the cement and lime industry and / or the quarrying industry and / or parts of ~~that~~ those industry industries ...

Clause 4.1

13. The matters above concerning clauses 4.4 and 4.5 highlight a potential issue that is similar in nature arising from clause 4.1.
14. By virtue of clause 4.1, the new award would cover employers “in the cement and lime industry and quarrying industry”. The clause might be read one of two ways:
 - (a) The award covers an employer if the employer is in both the cement and lime industry and the quarrying industry; or

⁶ November Decision at footnote 12.

⁷ November Decision at footnote 12.

(b) The award covers employers in the cement and lime industry and employers in the quarrying industry; but there is no requirement that the employer is in both industries.

15. Whilst paragraph (b) reflects the intention of the clause, paragraph (a) above does not. Having regard to the significant uncertainty that might flow from any ambiguity arising from clause 4.1, we submit that it should be amended to read as follows:

This industry award covers employers throughout Australia in the cement and lime industry and / or the quarrying industry and their employees ...

Clause 14.6(e)

16. Ai Group does not oppose the reference to 'double time' in clause 14.6(e) being corrected to '200%'. However, we propose that the words 'of the ordinary hourly rate' be added to the end of the clause.

4. COTTON GINNING AWARD 2020

Clauses 14.1(e) and 14.2(c)

17. The changes to these clauses identified at footnote 16 of the November Decision have not been made.

5. ELECTRICAL POWER INDUSTRY AWARD 2020

Clause 17.3(c)(ii)

18. Ai Group notes that clause 17.3(c)(ii) contains a minor drafting error in that the reference to clause 17.3(c)(i) has been repeated.