



# REPORT TO THE FULL BENCH

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 Yearly Review of Modern Awards: Various Awards**

(AM2014/217 and ors)

COMMISSIONER ROE

MELBOURNE, 26 MAY 2016

*Four yearly Review of Modern Awards: Various Awards - Report to the Full Bench.*

[1] This Report provides an update of the Report of 2 May 2016 in light of the reply submissions received and the further conference held on 26 May 2016. To assist the conference a revised summary of submissions was published and the parties were also provided with a draft report in advance of the conference. This Report attempts to refer to all matters which are outstanding at this stage of the process. Revised exposure drafts will be published shortly which reflect this Report. Parties are requested to advise if they have any issues with this Report and their reflection in the exposure draft within seven days of the issue of the revised exposure drafts. The relevant Awards are:

- AM2014/217 – *Banking, Finance and Insurance Award 2010*
- AM2014/218 – *Business Equipment Award 2010*
- AM2014/222 – *Contract Call Centres Award 2010*
- AM2014/221 – *Commercial Sales Award 2010*
- AM2014/242 – *Real Estate Industry Award 2010 (exposure draft – 29 April 2016 and revised summary of submissions – 19 May 2016)*
- AM2014/248 – *Telecommunications Services Award 2010*

## **GENERAL**

1. The general submissions raised by AiGroup in Section 2.7 of the submission of 14 April 2016 re the Schedules summarising hourly rates of pay. This matter will be referred to the Full Bench.
2. The general matters raised in the ABI submission of 15 April 2016 at Section 2.1, 2.2, 2.3, 2.11 and 2.13 are being pursued by ABI noting that they do not intend to run an evidentiary or substantive case in support of the submissions.

## **BUSINESS EQUIPMENT AWARD 2010**

1. Item 2: AiGroup proposal to vary the table of facilitative provisions in Clause 5.2. Following discussion at the conference on 29 April 2016 the next version of exposure draft will be varied to show in the table in Clause 5.2 that Clause 21.2 can be varied by an individual or the majority of employees. This matter is resolved.
2. Item 5 (and also Items 4 and 13) of the Summary of Submissions: AiGroup wish to pursue the issue of whether or not the “ordinary hourly rate” or the “minimum weekly

rate” should apply. This is an outstanding issue which will need to be referred to the Full Bench.

3. Item 14 and Item 62. Minimum hourly rate column has been inserted in exposure draft in response to various employer submissions. AiGroup do not support this. They point to commercial travellers stream where such employees are paid by reference to weekly or annual salary and to the exemptions which apply to salaried employees in clause 10.1. It was agreed at the 26 May 2016 conference that this concern can be resolved by the following:
  - Add a note in Clause 9.2: “there are exemptions which apply to certain employees see Clause 10”.
  - Delete the minimum hourly rate column for the commercial travellers stream (note this also resolves item 3).
4. Item 25 of Summary of Submissions: In respect to Clause 10.2 re exemptions for higher paid in clerical stream. The FWC proposed, for discussion, a possible amendment to the list of clauses and parties were requested to respond to this proposal by 16 May 2016. The AiGroup provided an alternative list in their submission. At the conference on 26 May 2016 consensus was reached to adopt the AiGroup list with the addition of Clause 2 – NES in the revised exposure draft. This amendment will resolve the matter.
5. Item 29 of Summary of Submissions: In respect to Clause 11.3(b)(i) definition of country territory. The proposal raised by ABI of 28 April 2016 was further considered by the parties and written comments were received by 16 May 2016. The consensus reached at the 26 May 2016 conference was that no change should be made to the exposure draft to insert a definition of country territory.
6. Item 34 of Summary of Submissions: Clause 11.4(c). Reference to State workers compensation will be deleted from the next version of the exposure draft. This matter is resolved.
7. Item 45: Clause 15.4 re daylight saving. ABI did not advise that they wish to pursue this matter in their reply submission. This matter is resolved.
8. Item 52: Clause 17.2(b) re annual leave loading. The words “of the ordinary hourly rate” will be deleted in Clause 17.2(b)(i) and (ii) in the next exposure draft. This matter is resolved.
9. Item 57: Schedule B. AMOD identified an error following the conference of 26 April 2016. Clause B1.1 needs to be properly formatted and the following sentence added: “Where an allowance is payable for all purposes in accordance with Clause 11.2, this forms part of the employee’s ordinary hourly rate and must be added to the minimum hourly rate prior to calculating penalties and overtime.” The second row of the table in B2.1 should be “% of ordinary hourly rate”. Clause B.1.2 should include an addition that “Consistent with Clause B.1.1, all purpose allowances need to be added to the rates in the table where they are applicable”. Changes will be reflected in the next version of the exposure draft.
10. Item 60: Clause B3.2 re Sunday 200% rate was further discussed at the conference on 29 April 2016. AiGroup and AFEI wish to pursue this matter further and have made further submissions in the reply submissions. This matter was further considered at the conference on 26 May 2016 and it was agreed to adopt the AiGroup position in the next version of the exposure draft. This resolves the matter.
11. Item 46: ABI wish to pursue the addition of words “required to” in the context of performing overtime work. This is an outstanding issue which will need to be referred to the Full Bench.

12. The following are the outstanding items from the 24 February 2016 summary of variations document: Item 2 (referred to separate full bench AM2016/8).
13. The only outstanding drafting issue is Item 5 from Summary of Submissions.

## **BANKING, FINANCE AND INSURANCE AWARD 2010**

1. Item 2 Summary of Submissions: Clause 3.1 Coverage. Although the amendments in the latest exposure draft are designed to ensure the status quo in respect to coverage, to avoid any doubt the next version of the exposure draft will restore the words in Clause 4.1 of the current award as proposed by the AiGroup, Business SA and AFEI. This should finalise this matter.
2. Item 16: Definition of shiftwork. AiGroup requested a further opportunity to consider the current exposure draft wording. AiGroup responded at the conference on 26 May 2016 that they accept the exposure draft. This resolves the matter.
3. Items 18 and 27 Summary of Submissions: AiGroup have advised that they wish to pursue the term loading rather than penalty in this case. This is an outstanding matter.
4. Item 21: Clause 9.1(a) AiGroup are proposing that “(full-time employees)” be added underneath “minimum weekly rate” and “minimum annual rate” in the table. AiGroup submit that this approach has been adopted in the revised exposure draft for *Local Government Industry Award 2015*. It is proposed to adopt this amendment in the next version of the exposure draft.
5. Item 23: AFEI are seeking that Clause 11.2 be amended to specify that allowances are pro-rata for casual and part time employees. This is not consistent with the approach being taken in awards generally and could lead to unintended consequences if pro-rata is not specified in every relevant clause in an award. AFEI advised at the 26 May 2016 conference that they will not further pursue the matter.
6. Item 24: Clause 11.3(b)(ii) re the issue of standby or call back. Following further consideration at the conference on 29 April 2016, the amendment sought by AiGroup will be made to the next version of the exposure draft. This matter is resolved.
7. Item 29: Schedule H definition of minimum hourly rate. AiGroup submits that the definition inserted in the exposure draft is sub-optimal. The next version of the exposure draft will include the definition as proposed by the AiGroup “minimum hourly rate means the minimum weekly rate prescribed by Clause 9 divided by 38”. This will resolve the matter.
8. FSU raised a matter concerning the term “minimum hourly rate” in Clause 13.6(b)(ii) on 25 May 2016. The exposure draft is consistent with Full Bench authority. No change will be made to the exposure draft.
9. The following are the outstanding items from the 24 February 2016 summary of variations document: Item 1 (Part time/Casuals Full Bench) and Item 4 Business SA (see also Item 14 of the Summary of Submissions document – this is a substantive item to change the hours when afternoon shift penalties apply).
10. The only outstanding drafting issues are Items 18 and 27 of the Summary of Submissions.

## **COMMERCIAL SALES AWARD 2010**

1. Item 4 of Summary of Submission: AiGroup and AFEI do not support the inclusion of definitions of “home” and “headquarters”. This was discussed further at the conference on 26 May 2016. It was agreed that the exposure draft be amended to

define “home” as “usual place of residence” but to make no change in respect to “headquarters”. This resolves the matter.

2. Item 5 of Summary of Submissions: AiGroup and AFEI maintain their view that “full-time employees” should be inserted in brackets below minimum weekly rate in the table in Clause 10.1. It is proposed to adopt this amendment in the next version of the exposure draft.
3. Item 11 of Summary of Submissions. AiGroup and AFEI do not agree that there is consensus to remove “in soliciting orders” from Clause 16.3. This was discussed further at the conference on 26 May 2016. It was agreed that the exposure draft will be amended to restore the words “in soliciting orders.”
4. The following are the outstanding items from the 24 February 2016 summary of variations document: Items 1 and 2 (referred to Annual Leave Full Bench).
5. There are no outstanding drafting issues.

### **CONTRACT CALL CENTRES AWARD 2010**

1. Item 3: AiGroup maintain their view that the words “who do the same work” should be removed from Clause 6.3(a)(iii). AiGroup seek a further change to the exposure draft of this clause to restrict to award derived entitlements. Following further discussion at the 26 May 2016 conference the following amendment to Clause 6.3(a)(iii) of the exposure draft should resolve the matter: “receives on a pro rata basis, award pay and conditions equivalent to those of full-time employees on the basis that ordinary weekly hours for full-time employees are 38.”
2. Item 5: Clause 8.1. AiGroup have provided further details in reply submissions re Section 147 issue. Following discussion at the 26 May 2016 conference it was agreed that this matter will be resolved by amending the exposure draft to add in brackets “(or up to 38 hours for casual employees).”
3. Item 12: Clause 13.1. ABI proposal. Following further discussion at the conference on 29 April 2016, the next exposure draft will include a note against the “ordinary hours worked” in the table that “the spread of ordinary hours is defined in Clauses 8.6 and 8.8.” This matter is resolved.
4. Item 16: Clause 14 overtime. ABI proposal. The clause relates to the daily or weekly number of hours and not to the spread of hours. No change is required to the exposure draft. This matter is resolved.
5. Item 24: AiGroup proposal re annual leave (Item 2 in summary of proposed variations). Following discussion at the 29 April 2016 conference it was agreed that the next version of the exposure draft will include the AiGroup proposed amendment to Clause 15.3 (correspondence of 28 April 2016) with the addition of the introductory words in the current draft, “Instead of the base rate of pay as referred to in s. 90(1) of the Act”. The words “of the minimum hourly rate” in Clause 15.4(a) will be deleted. This matter is resolved.
6. Item 34: The use of the expression “outside the spread of ordinary hours” has inadvertently not been inserted in B.1.1 but it has been inserted in B.2.1. The correction will be made in the next version of the exposure draft.
7. Item 38: B.2.3 the exposure draft has now removed the 25% loading for casuals on overtime. There was no contrary reply submission received. This matter is resolved.
8. Item 39: AiGroup has suggested a slight variation to the definition of minimum hourly rate to ensure that it applies to junior employees as well as adult employees. The correction will be made in the next version of the exposure draft.

9. Parties have had some preliminary discussions about the CPSU trainer proposal (Item 3 in summary of proposed variations). The AiGroup will respond further within one month and if requested a further conference may be convened.
10. The following are the outstanding items from the 24 February 2016 summary of variations document: Item 1 (referred to separate full bench), Item 3 (see point 1 above), Item 4 re annual salaries.
11. There are no outstanding drafting issues.

#### **REAL ESTATE INDUSTRY AWARD 2010**

1. No exposure drafting issues outstanding (a revised exposure draft has been published which reflects the matters agreed at the conference of 29 April 2016).
2. Outstanding variation proposals have been referred to a separate Full Bench.

#### **TELECOMMUNICATIONS SERVICES AWARD 2010**

1. Item 2: AiGroup press their submission that the words “who do the same work” be deleted from Clause 6.3(a)(iv). They are also concerned that the exposure draft provision does not make it clear that part time workers receive pro-rata award conditions. They suggest that without these words overaward conditions might also be implied. The following change will be made to the exposure draft to resolve this matter: “receives on a pro-rata basis, award pay and conditions equivalent to those of full-time employees on the basis that ordinary weekly hours for full-time employees are 38.” AiGroup also raise in respect to Clause 6.3(a)(iii) that because a part time worker can work additional hours on a day up to the equivalent of an equivalent full time employee without the payment of overtime rates, the restriction to “ordinary hours worked” is problematic. AiGroup propose to replace the words “ordinary hours worked” with “worked performed.” We propose to make this amendment in the next exposure draft. AiGroup also propose to insert the word “However” at the beginning of Clause 6.3(b)(ii). We propose to make this amendment in the next exposure draft. It was agreed at the 26 May 2016 conference that these changes are likely to resolve the matters.
2. Item 3: ABI advised in the reply submissions that they wish to pursue this matter. This is an outstanding matter which will need to be dealt with by a Full Bench.
3. Item 7: AiGroup have advised that they wish to pursue this matter to replace “ordinary hourly rate” with “minimum hourly rate”. This is an outstanding matter which will need to be dealt with by a Full Bench.
4. Item 9: Clause 8.1: AiGroup has provided further details in their Contract Call Centre Award submission in respect to Section 147 issues. Following discussion at the 26 May 2016 conference it was agreed that this matter will be resolved by amending the exposure draft to add in brackets “(or up to 38 hours for casual employees).”
5. Item 11: Daylight saving. ABI did not advise that they wished to pursue this matter further in their reply submissions. This matter is resolved.
6. Item 12: The next version of the exposure draft will include a table of rates in Schedule B for casuals overtime and those rates will be as per B.2.4 for full time and

part time employees. No reply submissions opposed this approach. This matter is resolved.

7. Item 15: AiGroup are proposing that “(full-time employees)” be added underneath “minimum weekly rate” in the table. AiGroup submit that this approach has been adopted in the revised exposure draft for *Local Government Industry Award 2015*. It is proposed to adopt this amendment in the next version of the exposure draft. This matter is resolved.
8. Item 26: AiGroup remained concerned at the implications of the move from a 30% loading to 130% of the ordinary hourly rate (etc). AiGroup submits that the removal of the word “penalty” in Clause 14.2(a) has not resolved the matter. This matter was further discussed at the 26 May 2016 conference. The matter has not been changed in the exposure draft to maintain consistency of approach. The AiGroup does not regard the matter as resolved.
9. Item 28: Clause 15.5(b) re part time exclusion from 10 hour break. Following further discussion at the conference on 29 April 2016 it was agreed that the next version of the exposure draft will include the part time exclusion consistent with the current Award. This matter is resolved.
10. Item 31: AiGroup proposal re annual leave (Item 2 in summary of proposed variations). Following discussion at the 29 April 2016 conference it was agreed that the next version of the exposure draft will include the AiGroup proposed amendment to Clause 16.3(a) (correspondence of 28 April 2016) with the addition of the introductory words in the current draft, “Instead of the base rate of pay as referred to in s. 90(1) of the Act”. The proposed variation to Clause 16.3(b) will not be included. This matter is resolved.
11. Item 34: Parties have had some preliminary discussions about the CPSU trainer proposal (Item 1 in summary of proposed variations). The AiGroup will respond further within one month. If requested a further conference may be convened.
12. Schedule B: Changes were made to the schedule in response to the issues raised by the AiGroup. Although it was not discussed at the 29 April 2016 conference, the AMOD team have further considered the appropriate tables in Schedule B. We now consider that the best way to resolve the AiGroup concern about the lack of distinction in the Award between day worker and shiftworker is to combine the tables for shiftworker and day worker. Also Clause B.1.2 should include an addition that “Consistent with Clause B.1.1, all purpose allowances need to be added to the rates in the table where they are applicable”. Changes will be reflected in the next version of the exposure draft.
13. The following are the outstanding items from the 24 February 2016 summary of variations document: Item 1 re trainer classification (see above Item 34).
14. Items 3, 7, and 26 from the summary of submissions are outstanding drafting issues.

