

Australian Industry Group

# 4 YEARLY REVIEW OF MODERN AWARDS

## **Submission**

Group 4A – 4C Revised Exposure  
Drafts and Summary Documents

**16 JANUARY 2017**



## 4 YEARLY REVIEW OF MODERN AWARDS

### EXPOSURE DRAFTS: GROUP 4A – 4C AWARDS

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## 1. INTRODUCTION

1. On 9 January 2017, the Fair Work Commission (**Commission**) directed interested parties to provide feedback regarding the following documents issued in relation to Group 4A – 4C awards:

- revised exposure drafts;
- summaries of submissions regarding technical and drafting issues; and
- summaries of submissions regarding substantive claims.

2. The Australian Industry Group (**Ai Group**) files this submission in accordance with the aforementioned direction in respect of the following awards:

1. *Aged Care Award 2010*;
2. *Air Pilots Award 2010*;
3. *Aircraft Cabin Crew Award 2010*;
4. *Airline Operations – Ground Staff Award 2010*;
5. *Children’s Services Award 2010*;
6. *Electrical, Electronic and Communications Contracting Award 2010*;
7. *Plumbing and Fire Sprinklers Award 2010*; and
8. *Social, Community, Home Care and Disability Services Award 2010*.

## 2. AGED CARE AWARD 2010

### Revised Exposure Draft – Aged Care Award 2016 and Revised Summary of Submissions – Technical and Drafting

69. A revised *Exposure Draft – Aged Care Award 2016* was published by the Commission on 3 January 2017. A revised summary of submissions regarding technical and drafting issues was published on the same date. These documents reflect the matters dealt with at the hearing before a Full Bench of the Commission on 6 December 2016.
70. On 16 December 2016, a conference was held before Commissioner Lee regarding the *Exposure Draft – Aged Care Award 2016*. Virtually all technical and drafting issues arising from the exposure draft were discussed at that conference. Where a matter had been identified as being agreed between interested parties at the aforementioned hearing, the Commissioner confirmed the parties' respective positions and clarified the precise terms of the agreement. In some cases, the ensuing discussion resulted in an alteration to the consent position that was previously apparent on the papers. Many additional matters were also resolved between the parties during the conference. The matters discussed at the conference are not reflected in the revised exposure draft or summary of submissions. As a result, they do not represent the current position of interested parties in relation to multiple technical and drafting issues.
71. On 23 December 2016, Commissioner Lee issued a draft report that documents the outcomes of that conference. Interested parties were afforded until 13 January 2017 to provide any comment regarding that draft report. A further conference has been listed for 6 February 2017 to discuss outstanding technical and drafting issues.

72. In our view, given the continuing conferencing process, which commenced prior to the publication of the revised exposure draft and summary of submissions, we propose that:
- interested parties not be put to the task of reviewing and providing comments regarding the revised exposure draft and summary of submissions at this time;
  - for the purposes of the conference before Commissioner Lee on 6 February 2017, the initial exposure draft, summary of submissions and the Commissioner's report be utilised and relied upon;
  - once the conferencing process has concluded, and subject to the publication of any subsequent document by the Commission that confirms the position of the parties in relation to any outstanding technical and drafting matters, the Commission revise the exposure draft and summary of submissions to reflect the ultimate positions there reached; and
  - interested parties thereafter be afforded an opportunity to review and provide comment regarding those documents.
73. We consider that the proposed course of action will ensure the efficient progress of the matter. Specifically, it would remove the need for interested parties to review, and for the Commission to revise, multiple versions of the exposure draft and the summary of submissions. Rather, parties will be afforded an opportunity to continue discussions that have to date proven to be productive; after which a revised exposure draft and summary of submissions would be published that document the joint position of interested parties in relation to a very significant number of technical and drafting matters.
74. We understand that the Aged Care Employers, ABI and the NSW Business Chamber, AFEI, Business SA and the HSU agree with the proposed course of action.

## Summary of Proposed Substantive Variations

75. In relation to the summary of proposed substantive variations published by the Commission on 6 January 2017, we make the following comments:

- Item S8: the HSU's claim has been withdrawn.<sup>1</sup>
- Item S12: to the extent that the HSU's claim relates to casual and part-time employees, this will be determined by the casual and part-time common issues Full Bench (AM2014/196 and AM2014/197). The ACTU has sought the introduction of a four hour minimum engagement for all such employees in the very vast majority of awards, including the *Aged Care Award 2010*.

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<sup>1</sup> 4 yearly review of modern awards – Payment of wages [2016] FWCFB 8463 at [137].

### **3. AIR PILOTS AWARD 2010**

76. We do not seek to make any comments regarding the revised exposure draft or summary documents published in relation to the *Air Pilots Award 2010* at this stage.

#### **4. AIRCRAFT CABIN CREW AWARD 2010**

77. We do not seek to make any comments regarding the revised exposure draft or summary documents published in relation to the *Aircraft Cabin Crew Award 2010* at this stage.



## 5. AIRLINE OPERATIONS – GROUND STAFF AWARD 2010

### Exposure Draft – Airline Operations – Ground Staff Award 2016

78. In relation to the revised *Exposure Draft – Airline Operations – Ground Staff Award 2016* published by the Commission on 6 January 2016, we make the following submissions.

#### 'Permanent night shifts'

79. We are concerned that certain changes made to clause 17.4 and Schedule B of the exposure draft in relation to the use of the term 'permanent night shift' may be somewhat confusing. We suggest that this issue be discussed during the conference listed before Vice President Catanzariti on 2 February 2017.

#### Clause 15.1(b) – Method of arranging ordinary hours

80. The reference to "clause 0" should be replaced with "clause 15.1(a)".

## 6. CHILDREN'S SERVICES AWARD 2010

### Exposure Draft – Children's Services Award 2016

81. In relation to the revised *Exposure Draft – Children's Services Award 2016* published by the Commission on 6 January 2016, we make the following submissions.

#### Clause 2 – Definitions – Ordinary hourly rate

82. A definition of 'ordinary hourly rate' has been inserted in clause 2 of the exposure draft, however the definition does not reflect that which was earlier determined by the Commission.

83. The exposure draft contains the following definition: (emphasis added)

**ordinary hourly rate** is the minimum hourly rate of pay for an employee plus any allowance payable for all purposes to which the employee is entitled. Where an allowance is payable for all purposes in accordance with clause 17.2 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

84. The *Children's Services Award 2010* contains only one all purpose allowance (the qualifications allowance), which is payable to some but not all employees covered by the award. In accordance with the Commission's decision of July 2015, the following definition should therefore be inserted:

**ordinary hourly rate** means the hourly rate for the employee's classification specified in clause 16, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes<sup>2</sup>

85. The definition contained in the exposure draft deviates materially from that determined by the Commission in the following ways:

- it does not make clear that the ordinary hourly rate is confined to the minimum hourly rate prescribed by the award, to the exclusion of over-award payments; and

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<sup>2</sup> 4 yearly review of modern awards [2015] FWCFB 4658 at [42].

- it unnecessarily and inappropriately purports to provide an explanation as to the meaning of the term “all purpose”, which is now defined in clause 2.

86. The definition should be replaced with that which we have proposed above.

Schedule B – Summary of hourly rates of pay

87. We do not consider that the proposed insertion of a footnote in the tables at Schedule B adequately addresses the concern raised by Ai Group at item 17 of the summary of submissions.
88. We suggest that this be discussed further during the conference listed before Commissioner Cirkovic on 7 February 2017.

## 7. ELECTRICAL, ELECTRONIC AND COMMUNICATIONS CONTRACTING AWARD 2010

### Exposure Draft – Electrical, Electronic and Communications Contracting Award 2016

89. In relation to the revised *Exposure Draft – Electrical, Electronic and Communications Contracting Award 2016* published by the Commission on 3 January 2016, we make the following submission.

#### Clause 7.2 – Facilitative Provisions for Flexible Working Practices

90. During the hearing before a Full Bench on 6 December 2016, Ai Group indicated that item 7 of the summary of submissions is ‘agreed’. Item 7 relates to a [submission](#) made by Ai Group on 8 July 2016:

85. Clause 7.2 refers to clause 16.6(b)(i), which allows for agreement between an employer and the majority of employees or an agreement between an employer and an individual employee. Despite this, clause 7.2 states that clause 16.6(b)(i) only allows for agreement between an employer and the majority of employees.

86. The final column in respect of clause 16.6(b)(i) should be amended by inserting the words “An individual or” before “the majority”.

91. The revised exposure draft purports to reflect the amendment proposed by Ai Group in the above passage. However, rather than inserting the relevant words in the seventh row (which relates to clause 16.6(b)(i)), the text has been inserted in the heading of the final column.

92. This should be amended by:

- deleting the words “an individual or the majority of employees” from the heading of the final column; and
- inserting the words “An individual or” before “the majority” in the final column in respect of clause 16.6(b)(i).

## Summary of Proposed Substantive Variations

93. In relation to the summary of proposed substantive variations published by the Commission on 6 January 2017, we make the following comments:

- Item S1: Ai Group's claim has been determined<sup>3</sup> and the consequential amendment to the award has been made<sup>4</sup>.
- Item S3: The issue here identified is not a substantive change. It is a technical and drafting issue arising from the exposure drafts, which Ai Group has raised in the context of many awards. We understand that it may be dealt with in a decision to be issued by the Commission in due course regarding group 3 awards<sup>5</sup>. It should be removed from the summary of proposed substantive variations.

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<sup>3</sup> *4 yearly review of modern awards – Payment of wages* [2016] FWCFB 8463 at [197].

<sup>4</sup> PR588646.

<sup>5</sup> Transcript of proceedings on 6 December 2016 at PN4.

## **8. PLUMBING AND FIRE SPRINKLERS AWARD 2010**

### **Exposure Draft – Plumbing and Fire Sprinklers Award 2016**

94. In relation to the revised exposure draft published on 5 January 2017, clause 21.6(c) should be amended by replacing the references to “Schedule X” in the note with “Schedule N”.

## **9. SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010**

### **Revised Exposure Draft – Social, Community, Home Care and Disability Services Industry Award 2016 and Revised Summary of Submissions – Technical and Drafting**

96. A revised *Exposure Draft – Social, Community, Home Care and Disability Services Industry Award 2016* was published by the Commission on 6 January 2017. A revised summary of submissions regarding technical and drafting issues was published on the same date. These documents reflect the matters dealt with at the hearing before a Full Bench of the Commission on 6 December 2016.
97. On 16 December 2016, a conference was held before Commissioner Lee regarding the *Exposure Draft – Social, Community, Home Care and Disability Services Industry Award 2016*. Virtually all technical and drafting issues arising from the exposure draft were discussed at that conference. Where a matter had been identified as being agreed between interested parties at the aforementioned hearing, the Commissioner confirmed the parties' respective positions and clarified the precise terms of the agreement. In some cases, the ensuing discussion resulted in an alteration to the consent position that was previously apparent on the papers. Many additional matters were also resolved between the parties during the conference. The matters discussed at the conference are not reflected in the revised exposure draft or summary of submissions. As a result, they do not represent the current position of interested parties in relation to multiple technical and drafting issues.
98. On 22 December 2016, Commissioner Lee issued a draft report that documents the outcomes of that conference. Interested parties were afforded until 13 January 2017 to provide any comment regarding that draft report. A further conference has been listed for 6 February 2017 to discuss outstanding technical and drafting issues.

99. In our view, given the continuing conferencing process, which commenced prior to the publication of the revised exposure draft and summary of submissions, we propose that:

- interested parties not be put to the task of reviewing and providing comment regarding the revised exposure draft and summary of submissions at this time;
- for the purposes of the conference before Commissioner Lee on 6 February 2017, the initial exposure draft, summary of submissions and the Commissioner's report be utilised and relied upon;
- once the conferencing process has concluded, and subject to the publication of any subsequent document by the Commission that confirms the position of the parties in relation to any outstanding technical and drafting matters, the Commission revise the exposure draft and summary of submissions to reflect the ultimate positions there reached; and
- interested parties thereafter be afforded an opportunity to review and provide comment regarding those documents.

100. We consider that the proposed course of action will ensure the efficient progress of the matter. Specifically, it would remove the need for interested parties to review, and for the Commission to revise, multiple versions of the exposure draft and the summary of submissions. Rather, if our proposal is adopted, parties will be afforded an opportunity to continue discussions that have proven to be productive; after which a revised exposure draft and summary of submissions would be published that document the joint position of interested parties in relation to a very significant number of technical and drafting matters.

101. We understand that the Aged Care Employers, ABI and the NSW Business Chamber, and the HSU agree with the proposed course of action.



## Summary of Proposed Substantive Variations

102. In relation to item 24 of the summary of proposed substantive variations published by the Commission on 6 January 2017, we note that the HSU's claim has been withdrawn.<sup>6</sup>

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<sup>6</sup> *4 yearly review of modern awards – Payment of wages* [2016] FWCFB 8463 at [137].