

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Reply Submission

Revised Exposure Draft – Outstanding

Technical and Drafting Issues

Clerks – Private Sector Award 2010

(AM2014/219)

27 SEPTEMBER 2016

Ai
GROUP

4 YEARLY REVIEW OF MODERN AWARDS
AM2014/219 CLERKS – PRIVATE SECTOR AWARD 2010

1. On 17 August 2016, the Fair Work Commission issued directions regarding a revised *Exposure Draft – Clerks – Private Sector Award 2016 (Exposure Draft)*. Those directions require interested parties to file written reply submissions on the 13 outstanding technical and drafting issues outlined in the revised summary of submissions, dated 4 August 2016.
2. The Australian Industry Group (**Ai Group**) files this reply submission in accordance with those directions.

Item 8: Clauses 8.1 and 14.1 – Shiftwork

3. We agree with the ASU's submission that a definition of "shiftworker" is not necessary. We refer to our submissions of 12 September 2016 in this regard.

Item 9 & 10: Clause 8.1(a)(i) & 8.1(a)(ii) – Weekly hours of work – day workers

4. With respect to the ASU's submissions regarding items 9 and 10, we refer to our submissions of 12 September 2016.

Items 17 and 18: Clause 8.2(b) – Altering spread of hours

5. No party appears to be arguing for a change to the current Award provisions. Given this context, Ai Group does not intend to file further detailed submissions addressing this matter at this stage.
6. Ai Group maintains that the clause permits a variation at both ends of the spread rather than merely at one end of the spread or the other.
7. The ASU have indicated they hold a belief that the clause only permits the spread of hours to be altered by either up to one hour at commencement, or up to one hour at the conclusion of the span of hours, but not at both ends of the spread in any one day. They have not however advanced any reasoning in support of this view.

8. Should the Commission form a provisional view that a change may be necessary we would seek to be heard further in relation to this matter. This may include seeking an opportunity to advance relevant evidentiary material. Any change to the status quo could have very significant ramifications.
9. We concur with Business SA's view that, in effect, a relevantly flexible clause would be consistent with the modern awards objective. Numerous mandatory considerations identified in s.134(1) would weigh in favour of a flexible provision being maintained.
10. No party has identified an argument regarding why it would be necessary for a modern award to only permit parties to agree to vary the spread of ordinary hours at one end or the other.

Item 35: Clause 13.4(b)(i) – Where the employee does not get a 10 hour rest

11. We agree with the ASU that the change proposed in the Exposure Draft does not appear to be problematic.

Item 39: Clause 14.1 – Definitions

12. We agree with the ASU that a definition of "shiftworker" is not necessary.

Item 40: Clause 14.2 – Altering the spread of hours

13. We adopt the same submissions as advanced in relation to items 17 and 18.

Item 41: Clauses 14.4 and 14.7 – Special rates not cumulative

14. Ai Group does not believe that the specific clause proposed by Businesses SA is necessary or appropriate. We maintain our view as articulated in paragraph 18 of our 2 September 2016 submissions.

Item 45: Clause 15.3 – Annual leave loading

15. We agree with the ASU that no amendment to clause 15.3 is required. We refer to our submissions of 12 September 2016 in this regard.

Item 49: Clause 13.4(c) – Rest period after working overtime

16. The deletion of the words “other than shiftworkers” from the aforementioned heading, as proposed by the ASU, is self-evidently an inappropriate remedy, as it would have the effect of expanding the application of other provisions under clause 13 to shiftworkers where they do not currently apply.
17. Accordingly, we suggest that clause 13.4(c) be deleted and that a new clause 14.5(c) be inserted in the following terms:

(c) The provisions of clause 13.4(b) apply in the case of shiftworkers as if eight hours were substituted for 10 hours when overtime is worked:

- (i) for the purposes of changing shift rosters;
- (ii) where a shiftworker does not report for duty and a day worker or a shiftworker is required to replace such shiftworker;
- (iii) where a shift is worked by arrangement between the employees themselves.