

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Further Submission

Social, Community, Home Care and
Disability Services Industry Award 2010
(AM2016/28)

6 May 2019

Ai
GROUP

AM2018/26 SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES AWARD 2010

1. This submission is filed by the Australian Industry Group (**Ai Group**) in response to a statement¹ issued by the Fair Work Commission (**Commission**) on 2 May 2019 and the accompanying revised survey (**Draft Survey**).

2. The statement includes the following passage:

[16] The NDS submit that in order to avoid the survey being completed by employers who are not covered by the award (or currently have an enterprise agreement), a preliminary question could be posed as follows:

‘Do you have any employees covered by the SCHADS Award?

Yes... please proceed to Q2

Yes, although an enterprise agreement currently applies... please proceed to Q2

No... do not proceed to any further questions, please simply return this survey as per the instructions.’

[17] Rather than a question set out in the terms sought by the NDS, the introductory text to the survey will make it clear that the survey should only be completed by employers who are currently covered by the award (and excludes employers who currently have an enterprise agreement in place).²

3. The NDS submission referred to is extracted below: (our emphasis)

3. This survey relates to those employers who have workers covered by the SCHADS Award. It is proposed that the survey be sent via member lists of the employer and industry associations that are parties to these proceedings. NDS is not able to determine with complete precision which members are covered by the SCHADS award although it is clear that a large majority are covered. Some employers will be covered by enterprise agreements and not currently using the SCHADS Award, but their responses will still be relevant as they form part of the sector.

4. In order to avoid the survey being completed by employers who are not in fact covered by SCHADS, or the survey not being completed by SCHADS covered employers that currently have an enterprise agreement, a preliminary question could be used as follows: ...

¹ 4 yearly review of modern awards—Group 4—Social, Community, Home Care and Disability Services Industry Award 2010 [2019] FWC 2987.

² 4 yearly review of modern awards—Group 4—Social, Community, Home Care and Disability Services Industry Award 2010 [2019] FWC 2987 at [16] – [17].

4. As we understand the NDS' submission, the additional survey question it proposed was to ensure that employers covered by the Award to whom an enterprise agreement applies understand that they *should* complete the survey. The NDS observed that the responses of enterprise agreement covered employers are relevant.
5. Respectfully, we are concerned that paragraph [16] of the Commission's statement potentially mischaracterises NDS' submission. It states that the NDS proposed the inclusion of an additional question in the survey "in order to avoid the survey being completed by employers who ... currently have an enterprise agreement". The draft survey has been amended to state that employers covered by an enterprise agreement are not to complete the survey.
6. We agree with the NDS' view that the responses of enterprise agreement covered employers are relevant and that such employers should not be precluded from completing the survey. For instance, to the extent that questions 1 – 7 are designed to provide the Commission with general information concerning the make-up of the industry, the responses of employers who are covered by an enterprise agreement are relevant and of a similar probative value to those employers who are *not* covered by an enterprise agreement.
7. Further, it cannot be assumed that enterprise bargaining in the sectors covered by the Award has resulted in the instrument having either no or little practical relevance to employers covered by enterprise agreements. The Award influences bargaining outcomes and is of course also relevant to the Commission's assessment as to whether to approve the agreement. Indeed the proposed changes to the Award may also impact upon whether parties engage in enterprise bargaining.
8. The Commission's proposed approach of including introductory text that excludes employers who are covered by an enterprise agreement from participating in the survey would also inappropriately exclude employers

covered by the Award that are a party to an enterprise agreement that only covers part of their workforce that is covered by the Award.

9. We acknowledge that a question as to the weight that can be attributed to the survey responses of employers covered by an enterprise agreement may arise. We consider that this can readily be dealt with by inserting an additional question in the survey that requires respondents to identify whether they are covered by an enterprise agreement that covers all of their SCHADS Award covered employees. We anticipate that this would enable the survey results to later be considered by reference to the enterprise coverage of the respondents and if sought, parties may be given an opportunity to make submissions about the weight that should be attributed to those survey results.