



# **Australian Federation of Employers and Industries (AFEI)**

## **4 Yearly Review of Modern Awards Comment on Exposure Drafts Sub-group 2A and 2B**

**28 January 2015**

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## Introduction

1. These submissions concern the Stage 2 Exposure Drafts for modern awards in Sub-groups 2A and 2B of the four yearly review of modern awards. Specifically, they concern:

### Sub-group 2A

- a. *Graphic Arts, Printing and Publishing Award 2014*
- b. *Storage Services and Wholesale Award 2014*

### Sub-group 2B

- a. *Animal Care and Veterinary Services Award 2014*
- b. *Health Professionals and Support Services Award 2014*
- c. *Nurses Award 2014*

2. These submissions also briefly consider the impact of the decision by the Full Bench of the Fair Work Commission in [2014] FWCFB 9412 (**the Decision**).

## Impact of the Decision

3. The abovementioned Exposure Drafts contain a number of common terms and/or new approaches to formatting awards that were also incorporated into Exposure Drafts published in Sub-groups 1A, 1B, 1C and 1D of the four yearly review of modern awards and which were the subject of consideration in the Decision.
4. The Decision, which was published after the distribution of the Stage 2 Exposure Drafts, resolved a number of issues identified by parties in respect to these common terms and/or new approaches to formatting.
5. For consistency, it is our submission that, subject to the below submissions, the outcome of the Decision in respect to these common terms and/or new formatting approaches should flow onto all modern awards in the four yearly review, including the abovementioned Exposure Drafts.

## **Inclusion of summaries/examples etc.**

6. Notwithstanding the above, we note two issues arising from the Decision. The first concerns the inclusion of NES summaries, pay slip provisions, examples that clarify the operation of award provisions and summary wage tables.
7. In the Decision, despite opposition to these terms from some parties, the Commission decided it will include summaries of the operation of awards and summary wage tables in the reviewed awards where appropriate.<sup>1</sup>
8. In relation to summaries of the NES and payslip provisions, however, the Commission proposed a different approach.<sup>2</sup>
9. The approach, which was the subject of ‘general agreement’, involves the Commission publishing a ‘legal instrument’ without NES summaries or payslip requirements and the ‘administrative arm of the Commission’ publishing an ‘annotated version’ of each award, developed in consultation with relevant parties, which will contain appropriate NES summaries and links to legislation.<sup>3</sup>
10. AFEI do not intend to agitate issues already decided in relation to the inclusion of summaries/examples in reviewed, however, we would like the Commission to reconsider whether it is appropriate to adopt the same approach to the inclusion of summaries of the operation of award terms and wages as that adopted in respect of the NES and payslips. That is, should these summaries/examples be included in the “legal instrument” or should they be included in an ‘annotated version’?
11. Given that the Commission has already indicated annotated versions of the awards will be prepared, it is our view that all summaries/examples should be included in this instrument, rather than the legal instrument. If this approach is adopted it may assist to assuage concerns raised by parties that were not resolved by the Decision, such as, what is the legal effect of an example highlighting the operation of the award and who decides whether a summary is “accurate”?

## **Inclusion of ‘ordinary hourly rates’**

12. At paragraphs [44] to [55] of the Decision the Commission considered the ‘inclusion of “ordinary hourly rates” for awards with an all purpose allowance’, for which a number of common concerns were identified (i.e. the definition of ‘all purpose’) and a number of award-specific submissions were made.

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<sup>1</sup> See paragraphs [58] and [63]

<sup>2</sup> See paragraphs [30] to [36].

<sup>3</sup> See paragraphs [35] and [36].

13. Despite the Commission acknowledging that ‘...the adoption of a general definition of “all purposes” may not be appropriate as it may give rise to unintended consequences’<sup>4</sup>, AFEI understood the Commission did not reach a concluded view in the Decision on either the issues of general application or the award specific issues.
14. Instead, the Commission invited further submissions on both of these issues to be filed by 6 March 2015 in response to the publication of revised draft awards in late January. As at the date of making these submissions, those drafts are yet to be published. Because of this, we are yet to see whether the Commission has removed, amended or retained the definition of ‘all purposes’.
15. Until we review the revised draft awards, we intend not to comment further on any general concerns arising from the inclusion of ‘ordinary hourly rates’ in modern awards.
16. Instead, these submissions will be limited to identification of award specific issues in Sub-group 2A and 2B.

## **Sub-group 2A**

### **Graphic Arts, Printing and Publishing Award 2014**

#### **Clause 6.4(b)(i) – Casual minimum wages**

17. Clause 6.4(b)(i) provides that:

‘A casual employee...must be paid the hourly rate prescribed in clause [9]...for the work being performed plus a casual loading of 25%.’

18. Clause 9 of the Exposure Draft is a table of wages that already includes a casual hourly rate inclusive of the casual loading. In our view the addition of casual rates in this table is likely to lead to confusion and possibly result in employers paying additional casual loading.
19. The casual hourly rates column in the table should either be deleted or include a clear signpost that the rates are inclusive of the casual loading provided in clause 6.4.

#### **Clause 6.4(c)(ii) – minimum payment for casuals**

20. The current clause omits ‘or’ between paragraphs (ii) and (iii).

#### **Clause 15.1 - Reclassification**

21. Parties are asked whether this clause is obsolete. We say it is.

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<sup>4</sup> See paragraph [52].

**Clause 18.2(d) – First aid allowance**

22. AFEI prefers retention of the existing description of the entitlement to the first aid allowance because it requires the person appointed to be the ‘current holder’ of appropriate first aid qualifications.

**Clause 19.5 – Payment of wages**

23. The clause contains a possible typographical error. The second ‘is’ would be appropriately replaced by ‘are’.

**21.5(b) – Methods of arranging hours**

24. This clause amends the existing clause 30.7(b) unnecessarily.

**21.7(e) – Fixation and changes to hours**

25. The existing clause (30.9(e)) requires payment for ‘all time worked’ at double time until the expiration of 48 hours. The new clause purports to require payment at double time for 48 hours, irrespective of the hours worked. The clause ought to be amended to reinstate the phrase ‘all time worked’.

**Clause 24.5(b) – Shiftworkers in a non-daily newspaper office**

26. Under the current award (at clause 30.5(e)) an employee is entitled to ‘200% of the ordinary work rate for an employee plus 17.5% of the classification level 5 rate.’
27. In the Exposure Draft the entitlement is worded: ‘200 + 17.5% of the Level 5 rate’.
28. The revised wording has the potential for employers to read the entitlement as 217.5% of the Level 5 rate rather than 200% of their rate plus 17.5% of the Level 5 rate.

**Clause 25.9 – Time of instead of overtime**

29. The clause removes the current words, ‘with the consent of the employer’ and replaces it with ‘at a time or times agreed by the employer’. The new words suggest the employer only has capacity to agree on the timing of when time in lieu is taken as opposed to whether such treatment of overtime can occur at all.

### **Schedule I.1.1 – Definitions**

30. The definition of ‘hourly rate’ in clause 3.1 of the current awards includes:

‘...In the event of an employee being employed on shiftwork the penalty payable for work at such hours will be part of the weekly wage of that employee.’

31. The new definition has been amended and now states:

‘...In the event of an employee being employed on shiftwork the penalty payable for work at such hours will be part of the weekly wage of that employee for all purposes’ (underlined words added).

32. In our view the addition of these words is potentially inconsistent with other parts of the current award, for example, clause 38, which provides that personal/carer’s leave is provided for in the NES and for which payment is made at the ‘base rate of pay’.

### **Storage Services and Wholesale Award 2014**

#### **Clause 5 – Facilitative provisions**

33. Parties are asked to confirm whether the travel allowance is a facilitative provisions. It is currently listed in the clause allowing ‘facilitation by individual agreement’. The travel allowance is not properly characterised as a facilitative provision triggered by individual agreement. It provides a right to additional payments in circumstances where the employer utilises its unilateral right to require work to be performed at another location.

#### **Clause 8.1 and 8.2 – Ordinary hours**

34. AFEI considers that the existing ordinary hours of work provisions do not require amendment.

35. In response to the Commission’s question at clause 8.2, it is our view that the span of hours may be extended at each end.

#### **Clause 11.4 – Wages and public holidays**

36. We think the proposal for which we were asked to provide comment on is a sensible one.

#### **Clause 13 – Higher Duties**

37. The Exposure Draft could be amended to refer to ‘full-time’ and ‘part-time’ employees. This does not change the operation of the term and is more consistent with the language of the award.

### **Clause 15.1 – Span of hours for shiftworkers**

38. In our view the span of hours can be extended by one hour at each end of the daily span.

## **Sub-group 2B**

### **Animal Care and Veterinary Services Award 2014**

#### **Clause 8.3 – Veterinary Surgeons**

39. This clause changes the effect of the existing clause 22.3 of the award. This is not the intent of the exposure draft process. The existing clause should be retained.

#### **Clause 11.2(a) – On-call allowance and payment**

40. The on-call allowance is in addition to any payments made for active duty. The payment for such active duty is at ordinary rates not the overtime rate.

#### **Clause 11.3 – Laundry allowance**

41. This clause should make clear that the payment of \$6.51 per week is as a “laundry allowance”.

#### **Clause 15.2(a) – Shiftwork penalties/span of hours**

42. The Commission posed the question:

“How does [clause 15.2(a)] interact with clause 8.2(a) that states that ordinary hours are worked until 9.00 pm.?”

43. In our view clause 15.2 and 8.2 operate separately. The latter concerns “day workers” whereas the former relates to shift workers only.

#### **Clause 16.2(b) – Veterinary surgeons and overtime**

44. In response to the question posed by the Commission at clause 16.2(b), we say no.

#### **17.3(a) – Annual leave loading**

45. The clause purports to include an entitlement to receive the ‘minimum hourly rate’ whilst on annual leave plus an annual leave loading. In this sense, the clause provides two entitlements - one to minimum payment of wages and another to annual leave loading. The clause should only deal with annual leave loading as per the existing award.

**Clause 20.5(a) – Non-standard working public holidays**

46. This clause contains a typographical error where it refers to full-time associates that do not regularly work a five day “Monday and Friday” week. It should say: “Monday to Friday”.

**Clause 20.4 – Payment for working public holidays**

47. The clause changes the existing arrangements in the awards. However, the existing clause may contain an error. This clause will benefit from discussion between parties with an interest in the award.

**Health Professionals and Support Services Award 2014**

**Clause 3.1 - Coverage**

48. The Exposure Draft refers to clause 11 with respect to coverage of employees under the award. The current award refers to the classification structure in Schedule B of the award. The reference to the classification structure in the Schedule is a clearer reference in our view.

**Clause 15.2(a)(iii) – Heat allowance**

49. We cannot say the clause is obsolete, however, we are unaware of its ongoing relevance. We support the removal of clauses that have no relevance.

**Clause 8.2(c) – Hours of work for five and a day private medical imaging practices**

50. The Exposure Draft introduces the words ‘[w]here a practice services patients on a five and a half day week basis...’ The inclusion of these words is unnecessary and may amend the existing meaning of the clause. The existing award provision should be retained.

**Nurses Award 2014**

**Clause 6.1(b) – Employment categories**

51. The Exposure Draft includes the sentence:

‘At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be employed on a full-time, part-time or casual basis.’

52. By contrast, the corresponding clause in the current award states:

‘At the time of engagement an employer will inform each employee whether they are employed on a full-time, part-time or casual basis.’



53. These clauses are material different with the Exposure Draft imposing a more onerous but less certain obligation on employers. The provision in the current award should be maintained.

**Clause 11.2 – Allowances for Registered Nurses at Level 4 and 5**

54. It is the view of AFEI that registered nurses at Level 4 and 5 are not entitled to the allowances in clause 11 of the Exposure Draft.

**Clause 17.5 – Annual leave loading**

55. It is the view of AFEI that annual leave loading is only payable for four weeks' of annual leave.

**AFEI**

**28 January 2015**