

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission

AM2014/201 Corrections and Detention
(Private Sector) Award 2010
– Revised Exposure Draft

13 NOVEMBER 2015

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GROUP

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AM2014/201 CORRECTIONS AND DETENTION (PRIVATE SECTOR) AWARD 2010

1. On 30 October 2015, the Fair Work Commission (Commission) published a revised *Exposure Draft – Corrections and Detention (Private Sector) Award 2014* (Exposure Draft). A revised ‘draft report’ was also published on the same date.
2. Pursuant to the Commission’s directions contained in the draft report, the Australian Industry Group (Ai Group) has identified the following matters.

Clause 2.1 – The National Employment Standards and this award

3. The word ‘in’ should be replaced with ‘and’. This appears to be a drafting error.

Clause 8.2(a) – Ordinary hours of work and roster cycles – day workers

4. Ai Group has made relevant inquiries but has been unable to obtain information regarding current industry practice with respect to the rostering of part-time employees or the incidence of part-time work.
5. Ai Group maintains the view that the proposed variation to this clause would be a substantive change that should not be made.
6. In advancing these submissions we note that the vast majority of the relevant pre-modern instruments did not stipulate a spread of ordinary hours.¹ Additionally, the AIRC Full Bench, when making the award stated as follows: (emphasis added)

[29] As we understand it none of the public sector correctional services in Australia is amenable to coverage by a modern award made under Part 10A of the WR Act. There are only three private sector employers in the corrections and detentions industry as we have defined it. Following the publication of the exposure draft for this industry, those three employers and the relevant unions reached complete agreement on the terms of a modern award. We have adopted that agreed draft albeit with some drafting changes that do not alter the substance of the agreed draft.

¹ See for example AN140033, AP777064, AP835779, AN140013, AN140092, AN160138 and AN160209.

We have changed the wording of cl.20.1(a) to remove a possible tension between cl.20.1(a) and cl.20.2. That change is intended to improve the clarity of the document without changing its effect. This industry operates 24 hours a day, seven days a week and it is a feature of relevant awards that ordinary hours can be worked at any time. Subject to the usual types of restrictions relating to maximum shift lengths and the like, shiftworkers can be required to work their ordinary hours at any time. There is also provision for daywork within the hours specified in cl.20.2, but dayworkers can be required to move to shiftwork to meet operational requirements.²

7. Given this context, the Commission should refrain from making the proposed amendment absent confirmation that the current terms operate in a problematic or unintended manner. Instead, the Commission should proceed on the basis that prima facie the award constitutes a fair and relevant minimum safety net.

Clause 11.2(b) – Dog handler’s allowance

8. Ai Group remains concerned that clause 11.2(b) does not properly reflect the current clause 15.5. It deviates substantively from it.
9. We deal firstly with clause 15.5(a) of the current award. It applies where an employee is responsible for maintaining an animal attached to a ‘dog handlers’ unit’ and such responsibility includes certain activities (namely, feeding, exercising, home kennelling, transporting and ensuring the safety and security of the animal). That is, the application of the provision is triggered only if an employee is responsible for maintaining an animal *and* that responsibility includes performing the tasks listed.
10. Clause 11.2(b) deviates from the position under the current clause as it, in effect, applies wherever an employee is responsible for maintaining an animal attached to a dog handler’s unit. It does not stipulate that the employee must also be responsible for the tasks listed at clause 15.5(a). In this way, clause 11.2(b) of the Exposure Draft potentially expands the application of the provision.
11. Clause 11.2(b) also imposes a new positive obligation on the employer to provide the identified services, while the current award clause assumes that

² [2009] AIRCFB 945 at [29].

responsibility will fall to the employee, with an employer merely having the option of providing or paying the costs of such services.

12. Although clause 11.2(b)(ii) provides an obligation to pay an allowance if the employer does not provide the service, it does not expressly enable an employer to not comply with 11.2(b)(i). Instead, it merely provides for a ramification of not providing it.
13. It is for these reasons that Ai Group submits that clause 11.(b)(i) and (ii) of the Exposure Draft be replaced with the following:
 - (i) This clause applies where an employee is responsible for maintaining an animal attached to a Dog Handlers' Unit and such responsibility includes:
 - feeding,
 - exercising,
 - home kennelling,
 - transporting, and
 - ensuring the safety and security of the animal.
 - (ii) An employer will either directly provide and/or pay the costs associated with maintaining the animal in accordance with this clause, or the employee will be paid a weekly allowance of 5% of the weekly rate of pay prescribed in clause 10.1.
14. An alternate approach would be to simply retain the wording of the current clause.

Clause 20.2 – Notice of termination by an employee

15. Clause 20.2 should be amended to rectify a drafting error as follows:

... If an employee fails to give the required notice the employer may withhold from any money due to the employee ...