



Australian Federation of Employers and Industries (AFEI)

4 Yearly Review of Modern Awards Comment on Exposure Drafts Sub-group 2C and 2D

6 February 2015

AFEI
Australian Federation of
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4 Yearly Review of Modern Awards

Comment on Exposure Drafts Sub-group 2C and 2D

5 February 2015

Introduction

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

Sub-group 2C

- a. *Passenger Vehicle Transportation Award 2014*

Sub-group 2D

- a. *Horse and Greyhound Training Award 2014*
- b. *Racing Industry Ground Maintenance Award 2014.*

2. These submissions should be read in conjunction with submissions filed by AFEI on 28 January 2015 in relation to Exposure Drafts in Sub-group 2A and 2B of the four yearly review. Those earlier submissions foreshadowed further submissions by AFEI that will be made in relation to issues arising from the inclusion of a definition of 'all-purposes' in modern awards. We continue to reserve our rights in respect to that issue.

Sub-group 2C

Passenger Vehicle Transportation Award 2014

6.5(d) – Minimum engagements for casuals

3. Parties are asked to confirm whether the minimum engagement for employees solely engaged in the transportation of children to and from school requires a minimum payment of two hours 'to school' plus two hours 'from school'.
4. In our view, the clause does not operate this way. The clause is constructed in such a way where a single "engagement" can include the transportation of children both to and from school. This engagement must be for a minimum of 2 hours. By virtue of the broken shift provisions, this engagement could be split as one hour 'to school' and one hour 'from school'. The other result suggested would, in our opinion, result in an unreasonable outcome whereupon school bus operators have a longer minimum engagement than other passenger vehicle drivers when they perform work at both ends of the shift. In our view, this was not the intention of the provision.

Clause 8.1(a) – Span of hours

5. The Exposure Draft amends the current award by confining the operation of the term to full-time employees only. The corresponding clause (see clause 21.1) is not so confined and its construction should be retained.
6. Parties are asked to consider whether a span of hours should be introduced for employees on two driver operations. AFEI is opposed to this.

Clause 9 – Breaks

7. The heading for clause 9 is 'Unpaid Meal Breaks'. Clause 9.3 provides for a paid crib break. The clause should be headed 'Meal Breaks'.

Sub-group 2D

Horse and Greyhound Training Award 2014

Clause 6.3 – Probationary Employees

8. The Commission has retained the heading of the existing clause dealing with probationary employees (see clause 10.2), but has not included the term itself. Instead it says:

“The Commission’s provisional view is that it may no longer be necessary to include provisions relating to probationary periods in modern awards, given changes in the legislative scheme. This does not represent a concluded view of the Commission, and parties are invited to make submissions on this issue.”

9. AFEI agrees that the retention of probationary periods is, in most cases, no longer necessary. Notwithstanding this general view, it is still appropriate to consider each modern award clause and sub-clause concerning probationary periods in their own right to ascertain their continuing relevance.
10. In relation to this Exposure Draft, AFEI supports the deletion of the clause.

Clause 6.5 – Casual employees

11. Clause 6.5(a) of the Exposure Draft provides:

“A casual employee is to be employed by the hour and the employment of a casual employee may be terminated at any time.”

12. The Commission has posed the question whether the use of the phrase *“the employment of a casual employee may be terminated at any time”* is problematic given access of regular and systematic casual employees to the unfair dismissal regime and the right to seek general protections remedies.

13. AFEI agrees that the current term could be better expressed. In our view, clause 6.5(a) should be replaced with:

“A casual employee is one engaged and paid as such.”

14. Formulating the clause in this way is ideal as it fits neatly with the drafting of sub-clauses 6.5(b) and (c) which elaborate upon the engagement of casual employees and sub-clause 6.5(e) which elaborates on payment obligations.

Racing Industry Ground Maintenance Award 2014

Clause 10.7 – Payment of Wages

15. Parties are asked to consider whether the penalty in this clause should be payable “through circumstances beyond the reasonable control of the employer” or “through circumstances not beyond the reasonable control of the employer”.
16. It is the view of AFEI that this clause, as it currently appears in both the award and in the exposure draft, incorrectly translates the original drafting of the term that was contained in the exposure draft published by the Australian Industrial Relations Commission (See clause 17). Although we disapprove of penalty clauses such as this generally, this clause would significantly clearer if it was rephrased as follows:

An employee not paid within the time required by clause 10.7(a) ~~through circumstances beyond the reasonable control of the employer~~ is entitled to a payment of \$29.10 for each day on which the wages remain unpaid. **This clause will not apply where the delay is due to circumstances beyond the reasonable control of the employer.**

Clause 15.5 – Loss of clothing allowance

17. Parties are asked to consider whether the loss of clothing allowance, which is currently expressed as a percentage of the standard rate and thus adjusted through minimum wage variations, ought to be adjusted by movements in the Consumer Price Index.
18. We agree it would. Such an approach is common to other modern awards such as the *Building and Construction General On-Site Award 2010* (see clause 20.3) and *Joinery and Building Trades Award 2010* (see clause 24.2).

AFEI

6 February 2015