

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission – Outstanding Issues

Storage Services and Wholesale Award 2010

(AM2014/214)

8 APRIL 2016

Ai
GROUP

4 YEARLY REVIEW OF MODERN AWARDS

AM2014/214 STORAGE SERVICES AND WHOLESALE AWARD 2010

1. INTRODUCTION

1. On 15 March 2016, Deputy President Bull published an 'Updated Report to the Full Bench' (**Updated Report**) in relation to the 4 yearly review (**Review**) of the *Storage Services and Wholesale Award 2010* (**Storage Services Award** or **Award**). Attached to the Updated Report is a document that summarises the positions and submissions of interested parties in respect of the *Exposure Draft – Storage Services and Wholesale Award 2015* (**Exposure Draft**) and substantive changes sought to the Award.
2. On 15 March 2016, the Deputy President issued the following direction (**March 2016 Direction**): (emphasis added)

I refer to the Full Bench Report for the above award, where there are 5 issues (numbers 72 through 77 of the Report) outstanding where the parties were to hold further discussions in an effort to resolve the issues.

The Commission requests parties provide a final update as to the status and outcome of these discussions by 4pm 22 March 2016.

3. This submission is filed by the Australian Industry Group (**Ai Group**) in accordance with the aforementioned direction. It deals firstly with certain procedural matters associated with the Review of the Storage Services Award. We then proceed to address the six outstanding issues identified in the Updated Report, pursuant to discussions held with other interested parties since its publication.

2. PROCEDURAL MATTERS

4. We here set out the procedural history relevant to the Review of the Award for the purposes of enabling the Commission to assess the process by which any outstanding issues should be dealt with hereafter:

- A [conference](#) was held before Deputy President Bull on 19 November 2015. Issues arising from the Exposure Draft and substantive variations sought to the Award were discussed.
- On 7 December 2015, the Deputy President published a [report](#) to the Full Bench (**First Report**). It summarised the submissions and positions of the parties as at the relevant time.
- A [direction](#) was issued by Deputy President Bull on 14 December 2015 (**December 2014 Direction**). It required parties to “file final submissions or comment, including any further discussions that have been held between the parties which have reached a consensus position in relation to any outstanding issues with respect to the Storage Services and Wholesale Award 2010 by **3pm 22 January 2016**” (underlining added).
- Pursuant to a request from the parties, Deputy President Bull [conducted](#) a further conference on 5 January 2016. The notice of listing for this conference was issued on 7 December 2015, along with the First Report. The purpose of this conference was to discuss outstanding matters arising from the Exposure Draft and substantive variations sought to the Award.
- Later on 5 January 2016, the Deputy President’s chambers circulated ‘draft updated’ report to the Full Bench (**Draft Updated Report**), seeking comments from interested parties as to its contents by 12 January 2016. The Draft Updated Report reflected the revised position of interested parties where relevant, in accordance with discussions before the Deputy President during conference held earlier that day.

- On 22 January 2016 Ai Group [wrote](#) to the Deputy President's chambers with respect to his December 2014 Direction, seeking that it be set aside on the following bases:
 1. The December 2014 Direction was with reference to the First Report, which was no longer representative of the position of the parties regarding various claims on account of the further discussions that had taken place on 5 January 2016; and
 2. The Draft Updated Report had not been finalised and published as at the date by which the Deputy President had sought "final submissions and comment".

Ai Group did not receive a response to its request.

- On 22 January 2016, the SDA, NUW and AWU (**Unions**) filed a joint [submission](#), which deals with substantive variations sought to the Award that are opposed by Ai Group.
- On 15 March 2016, the Deputy President published the [Updated Report](#). On the same date, he also issued the [March 2016 Direction](#) which we here reproduce for ease of reference: (emphasis added)

I refer to the Full Bench Report for the above award, where there are 5 issues (numbers 72 through 77 of the Report) outstanding where the parties were to hold further discussions in an effort to resolve the issues.

The Commission requests parties provide a final update as to the status and outcome of these discussions **by 4pm 22 March 2016**.

- Ai Group again [wrote](#) to the Deputy President on 19 March 2016. In that correspondence, we requested the following:
 1. An opportunity to file submissions or comment regarding any outstanding issues with respect to the Award, as identified in the report of 15 March 2016, for the reasons there outlined;
 2. An opportunity to respond to submissions jointly filed by the Unions on 22 January 2016, noting that material in support of

the variations sought by the Unions had not previously been filed and as such Ai Group had not had an opportunity to respond to it; and

3. An extension of time to provide an update as to the status and outcome of discussions regarding issues 72 – 77 as required by the March 2016 Direction, until 8 April 2016.

- On 21 March 2016, Deputy President Bull’s chambers [responded](#) as follows: (emphasis added)

Taking into account the grounds listed below in Ai Group’s, [an extension is granted in respect of the Deputy President’s Direction issued 15 March 2016.](#)

Accordingly, in reference to the Full Bench Report for the above award, where there are 5 issues (numbers 72 through 77 of the Report) outstanding where the parties were to hold further discussions in an effort to resolve the issues; [parties are to provide a final update as to the status and outcome of these discussions by 4pm 8 April 2016.](#)

5. As can be seen, the March 2016 Direction and the subsequent extension of time granted by Deputy President require the parties to provide “a final update as to the status and outcome” of discussions regarding issues 72 – 77 of the Updated Report. The Commission has not yet issued any direction affording parties an opportunity to file material in response to that filed by the Unions on 22 January 2016.
6. The process by which outstanding matters will be dealt with by the Commission is unclear.
7. As we set out below, it would appear to us that the remaining matters can be categorised as follows:
- One issue that is now resolved (issue 74);
 - One variation to the Award sought by Ai Group that will not be pursued at this time (issue 77);
 - One variation to the Award in order to address a matter identified by Ai Group that is not opposed by any interested party (issue 75); and

- Three variations sought to the Award by the Unions that remain in dispute (issues 72, 73 and 76). The Unions' submissions of 22 January 2016 are in support of these claims.
8. In our view, the Commission should issue directions for the filing of comprehensive written submissions, by a date not less than four weeks from the date of those directions:
- In support of the Ai Group proposal that is not opposed by any interested party (issue 75); and
 - In response to the Unions' submissions of 22 January 2016 (issues 72, 73 and 76).
9. If the Commission is subsequently minded to deal with these matters on the papers, parties should be given an opportunity to advise whether they seek an opportunity to be heard orally in respect of any of the outstanding matters.

3. ISSUE 72: DEFINITION OF FULL-TIME EMPLOYEE

10. Issue 72 relates to the definition of 'full-time employee', as found at clause 11.2 of the Award and clause 6.2 of the Exposure Draft. The Unions seek a variation to it, as set out in its submission of 22 January 2016. The issue appears to have been borne out of a concern identified by the Fair Work Ombudsman.
11. Ai Group has discussed the matter with the Unions, however it remains unresolved. We note that it is closely associated with the Unions' claim regarding the higher duties provision (issue 73) and therefore, should not be considered in isolation from it.

4. ISSUE 73: APPLICATION OF HIGHER DUTIES

12. Issue 73 relates to clause 19 of the Storage Services Award and clause 13 of the Exposure Draft. It provides a "weekly employee" with the benefit of a higher rate of pay where that employee "performs work temporarily at a

classification higher than that under which the employee is engaged or deemed to be working”.

13. The Unions seek to vary clause 19 of the Award such that it applies to all employees; that is, full-time, part-time and casual employees. The change is a substantive one. Submissions in support of its claim are contained in the material filed by the Unions on 22 January 2016.
14. Ai Group opposes the Unions’ claim and as earlier set out, seeks an opportunity to file material in reply.

5. ISSUE 74: RATE PAYABLE FOR CALL-BACK

15. It is our understanding that issue 74 has been resolved. It relates to a question posed by the Commission at clause 16.6(a) of the Exposure Draft as to the meaning of the term “appropriate rate”.
16. On 19 January 2016, the AWU wrote to Deputy President Bull’s chambers indicating that whilst the Unions had previously sought a variation to clause 16.6(a), they were no longer pursuing such a change. The correspondence states that the Unions are not opposed to the retention of the term “appropriate rate”. The Updated Report does not reflect this correspondence.
17. The Unions’ position is consistent with that put by Ai Group and other employer representatives. On this basis, this matter would more appropriately form part of Deputy President Bull’s list of “issues agreed between the parties”.

6. ISSUE 75: CLASSIFICATION DEFINITIONS

18. Ai Group, the Unions, and ABI and the NSW Business Chamber agree that the classification definitions for ‘wholesale employee level 3’ and ‘wholesale employee level 4’ should be varied as follows:

B.7 Wholesale employee level 3

B.7.1 An employee performing work at a wholesale establishment at a higher level than a Wholesale employee level 2.

B.7.2 Indicative of the tasks which might be required at this level are the following:

- (a) supervisory assistance to a designated person in charge of a defined section/department ~~section manager~~ or team leader;
- (b) opening and closing of premises and associated security; or
- (c) security of cash.

B.8 Wholesale employee level 4

B.8.1 An employee performing work at a wholesale establishment at a higher level than a Wholesale employee level 3.

B.8.2 Indicative of the tasks which might be required at this level are the following:

- (a) being in charge ~~management~~ of a defined section/department;
- (b) supervision of staff;
- (c) stock control; or
- (d) buying/ordering requiring the exercise of discretion as to price, quantity, quality etc.

B.8.3 The level 4 classification shall not apply to employees principally engaged in managerial work including the performance of tasks other than those identified in B.8.2.

7. ISSUE 76: OVERTIME RATE ON A SATURDAY

19. Issue 76 is a particularly contentious one. It has arisen as a product of the schedules appended to the Exposure Draft which set out, amongst other things, rates payable for overtime performed on a Saturday.
20. Ai Group opposes the rates prescribed for such work in the Exposure Draft. It is our position that they do not properly reflect the terms of the Award and are inconsistent with our interpretation of the relevant provisions. We understand that as a result of this controversy, the Unions are now proposing a variation to the terms of the Award itself. In effect, the grant of the Unions' claim would substantially increase the rate at which an employee is to be paid for overtime performed on a Saturday and, unsurprisingly, is opposed by Ai Group.

21. As earlier set out, Ai Group seeks an opportunity to file material in reply to that found in the Unions' submissions of 22 January 2016 in this regard.

8. ISSUE 77: ANNUALISED SALARIES

22. Ai Group does not intend to pursue this variation at this time.