



Jobs Australia

Community Sector Industrial Relations

IN THE FAIR WORK COMMISSION

4 YEARLY REVIEW OF MODERN AWARDS

Submission: Drafting and Technical Issues

Exposure Draft: *Labour Market Assistance industry Award 2015*

Group 3 AM2014/232

14 April 2016

Jobs Australia Ltd

PO Box 299

Carlton South VIC 3053

Contact: Michael Pegg; Ph 03 9349 3699; email mpegg@ja.com.au

Introduction

1. Jobs Australia makes this submission in response to the exposure draft published by the Fair Work Commission for the *Labour Market Assistance industry Award 2015*.
2. This submission deals with drafting and technical issues, in accordance with the Commission’s Statement of 23 March 2016 regarding group 3 and 4 awards.
3. This submission does not deal with other matters regarding this award raised in our earlier submission of 2 March 2015.

Labour Market Assistance Industry Award 2015 – Exposure draft Issues

4. *Clause 3.7 Coverage*
 - a) It is asked whether the Note added at the end of clause 3.7 should remain in the award. Jobs Australia has no objection to that note remaining.
5. *Clause 8.3 (b) Accrued days off*
 - a) It is asked whether the options for how ordinary hours may be worked under the accrued days off option should be included.
 - b) Jobs Australia is not aware of any evidence of problems with how the clause currently operates.
 - c) If the options are to be included, they should be consistent with the pre-reform award provision (*Community Employment Training and Support Staff Award 1999 – AP772299CRV*) and specify either a 19 day month option, or other mutually agreed options to be worked within the spread of hours set by clause 8.2.
6. *Clause 8.4 (b) Flexible working hours*
 - a) The question is raised as to whether the reference to “approved paid leave” should be amended to “approved leave” to be consistent with the definition provided earlier in this clause.
 - b) The term “approved paid leave” in clause 8.4 (b) (viii) is only used in the particular context of calculating a flex debit. It ensures that absences on paid leave such as annual or personal leave do not affect the calculation of flex debit, but unpaid leave will have an effect. Therefore it is necessary to retain the distinction “approved paid leave” from “approved leave” which can be paid or unpaid. We submit that there should be no change to the wording.
7. *Clause 11.2 Excursions*
 - a) The pre-reform award (*Community Employment Training and Support Staff Award 1999 – AP772299CRV*) provided for accrual of time in lieu of payment for overtime where work was performed outside the ordinary hours. Time in lieu was accrued on an hour for hour basis rather than penalty rates as provided for by the overtime clause.
 - b) The award is currently silent on whether overtime applies to work in excess of ordinary hours while on an excursion. The current overtime clause does not apply to work outside the ordinary hours while on an excursion. It only specifies that overtime applies to work “outside the spread of hours

provided for in clause in clause 21” and by not making any reference to the Excursions clause, excludes it.

- c) It is not clear that this issue was specifically considered during award modernisation. We are not aware of any evidence that there have been any problems arising from this provision and therefore there is no need for any change.
- d) In the alternative, if the Commission determined that there should be compensation for hours worked in excess of ordinary hours on an excursion, our view is that the pre-reform award provision should be included in this award. It would provide reasonable compensation for hours actually worked, while still facilitating the operation of excursions.

8. *Clause 20.2 Public Holidays*

- a) A question is asked about penalty rates for overtime on a public holiday in this clause, compared with the overtime provision in clause 14.2 (c).
- b) There appears to be a contradiction between the two provisions in the current award.
- c) The pre-reform award (*Community Employment Training and Support Staff Award 1999 – AP772299CRV*) provided a separate penalty rate for overtime on a public holiday and that is reflected in the current overtime clause.
- d) The issue could be resolved by amending clause 20.2 to read “*An employee who works on a public holiday will be paid at 250% of the minimum hourly rate for all work performed during ordinary hours of work*”.

9. *Schedule E – National Training Wage*

- a) Jobs Australia has no objection to the proposed wording for E3.3.