

FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

Matter No: AM2014/257

Architects Award 2010

Submission by the Association of Professional Engineers, Scientists and Managers, Australia in response to the Exposure Draft

INTRODUCTION

1. This submission by the Association of Professional Engineers, Scientists and Managers Australia (APESMA) is made in response to the exposure draft released by the Fair Work Commission (FWC) for the *Architects Award 2010* (the Award), and in accordance with the Statement issued by Justice Ross on 8 December 2014¹.
2. We note that in this Statement Justice Ross indicates that these exposure drafts are not intended to incorporate any substantive changes or to amend any entitlements under the current modern awards nor that they represent the concluded view of the Commission.
3. In correspondence forwarded to the Fair Work Commission on Friday 29th July 2016 the Association advised that it had been unable to meet the 21st July 2016 deadline for the filing submissions and sought an extension of time in order to do so.

COMMENTS ON SPECIFIC PROVISIONS IN EXPOSURE DRAFTS

Clause 10 – Casual employment

4. 10.3 The alternative of including “*as a full – time or part-time employee*” in place of “*deemed to be employed by the week*” would allow for greater clarity of the entitlement and accordingly is supported.

¹ [2014] FWC 8837

Clause 13 – Overtime

5. Sub-clause 13.1(a)

There are 2 issues.

Compensation for work performed outside the spread of hours

13.1 If to “*compensate an employee for all time worked in excess of normal hours*” does not include work “*outside the spread of ordinary hours*” then the utility of Clause 12.1 in Clause 12 – Hours of Work would be called into question. There would be very few if any clauses in modern awards defining the spread of hours which do not provide for compensation for work outside the spread of hours. Accordingly, in order to clarify this entitlement APESMA supports a variation to Clause 13 to provide for “*in excess of ordinary hours or outside the spread of ordinary hours*”.

Time off in lieu

In respect of whether time off in lieu is on “*an hour off for an hour basis*” or in accordance with penalty rates being 1.5 hours off for each hour worked” APESMA submits that the model clause as set out in Attachment A to the Decision in the Award flexibility case [2016] FWCFB 4579 should be inserted into the Architects Award.

Clause 14.1 – Minimum Wages

6. APESMA would support the inclusion of weekly rates to assist employees covered by the Award to understand more easily what they are paid.
7. In addition to the abovementioned matters the Association notes the Decisions of the Fair Work Commission in respect of Part-time employment, Casual employment, Overtime, Annual Leave and Part-day public holidays.

COMMENTS ON OTHER SUBMISSIONS

Association of Consulting Architects Australia – Platinum Employee Relations

Clause 15.4 – Equipment and special clothing allowance.

8. The exposure draft essentially re-writes the former Clause 16.3 but preserves the content. The Employer proposal seeks to substantively alter the clause by removing the list of items for which the employer must reimburse the employee. APESMA’s concerns are two- fold.

Firstly, the removal of the specified items will inevitably result in disputation regarding the specific items which must be reimbursed. Secondly the Association is therefore of the view that this proposal is a substantive variation and should be dealt with in that manner.

Clause 16 – Superannuation

9. APESMA supports a variation to Clause 16 to include Construction and Building Industry Super (Cbus) but questions whether it should be considered as part of proceedings related to the exposure draft.

Clause 25.1 – Termination of employment

10. The proposal to delete the existing entitlement is a substantive variation and APESMA submits that it should not be dealt with as part of the exposure draft. The existing award provision has a long history and is based on provisions in private sector awards covering professional employees. More recently this matter was considered during the Award Modernisation proceedings which led to the creation of such awards as the Professional Employees Award. APESMA strongly opposes the proposed variation and accordingly submits that there would be a need for the Association of Consulting Architects Australia to establish cogent reasons as to why their proposal should be agreed to by the Commission.

Cplus C Architectural Workshop

Graduate of Architecture

11. APESMA notes the proposal to vary the classification structure to clarify the position of Architectural graduates who possess a Bachelor degree. The existing award definition at Clause 2 – Definitions defines a Graduate of Architecture as *“an employee who holds an Approved Qualification under the eligibility requirements for admission to the Architectural Practice Examination (APE) for registration as an Architect under Australian legislation.”* Historically this provision covered those persons with a Bachelor degree but in recent times a Master’s degree has become the minimum requirement. Therefore, there is ambiguity as to the appropriate award coverage of those with a Bachelor degree and the 4 Year Review provides an opportunity to address this issue. APESMA has for some time been considering its response and will either agree to support or seek to amend the Cplus C proposal.

CONCLUSION

12. Finally, the Association would generally support the content of the exposure draft and considers it to be an improvement to the existing award.

Submitted by:

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