

From: Ruchi Bhatt [mailto:Ruchi.Bhatt@aigroup.com.au]
Sent: Tuesday, 24 July 2018 2:49 PM
To: Chambers - Ross J
Cc: AMOD; natalie.dabarera@unitedvoice.org.au; Kate Thomson; Chris Klepper (Business SA)
Subject: AM2016/15 Plain Language Redrafting - Cleaning Services Award 2010 - Ai Group Submission

Dear Associate,

Please find attached a submission of the Australian Industry Group (**Ai Group**) in relation to the above matter.

Ai Group respectfully seeks leave to file and rely upon the attached submission, which ought to have been filed by 13 July 2018. We apologise unreservedly for the late filing of the submission, which has regrettably occurred due to our oversight.

We understand that United Voice does not oppose the late filing of our submission on the basis that it is afforded additional time, if necessary, to file a submission in reply.

Kind regards,
Ruchi.

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Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Further Submission

Plain Language Re-Drafting –
Cleaning Services Award 2010
(AM2016/15)

24 July 2018

Ai
GROUP

4 YEARLY REVIEW OF MODERN AWARDS
AM2016/15 PLAIN LANGUAGE RE-DRAFTING
– CLEANING SERVICES AWARD 2010

1. The Australian Industry Group (**Ai Group**) makes this submission in response to the statement¹ issued by the Fair Work Commission (**Commission**) on 29 June 2018 (**Statement**). It relates to certain technical and drafting issues arising from the *Exposure Draft – Cleaning Services Award 2010* (**Exposure Draft**), which has been the subject of discussion during conferences listed before His Honour, Justice Ross; most recently on 22 June 2018 (**Conference**).

Item 3: Clause 9 of the Exposure Draft²

2. We understand that the Commission intends to issue a background paper setting out the issues in relation to clause 9 of the Exposure Draft, unless a resolution is reached between the parties present at the Conference.
3. Ai Group has discussed the issue with United Voice and Business SA. We understand that neither party opposes the following form of words to replace clause 9:
 9. A full-time employee is an ongoing employee engaged to work an average of 38 ordinary hours per week. Those hours are to be arranged in accordance with clause 13.1 – clause 13.4.
4. The proposed words maintain the substance of the current definition of a full-time employee. It is our submission that the proposed words would resolve the various issues raised by interested parties regarding clause 9.
5. The above proposal is however put on the basis that interested parties will be granted an opportunity to revisit it during the course of this process if variations are made to other aspects of the Exposure Draft that have a substantive bearing on the definition. One such example is clause 13.1 of the Exposure Draft, which

¹ 4 yearly review of modern awards – Plain language re-drafting – Cleaning Services Award 2010 [2018] FWC 3842.

² Statement at [19].

remains unresolved and we understand will be the subject of further consideration by the Commission.

6. Finally, whilst we provided our proposal to ABI and the NSW Business Chamber on 27 June 2018 we have not received a response and accordingly, for the purposes of this submission, we are unable to advise of their position in relation to it.

Item 4: Clause 10.1 of the Exposure Draft

7. It appears that Ai Group's submission summarised at item 10 of the summary of submissions was not discussed at the Conference. Ai Group continues to press that submission.

8. Ai Group has discussed the issue with United Voice and Business SA. We understand that neither party opposes the following form of words to replace clause 10.1:

10.1 A part-time employee is an employee who is engaged to work for fewer than an average of 38 ordinary hours per week and whose hours of work are reasonably predictable

9. The proposed words maintain the substance of the current definition of a part-time employee. It is our submission that the proposed words would resolve issues raised regarding clause 10.1.
10. Whilst we provided our proposal to ABI and the NSW Business Chamber on 27 June 2018 we have not received a response and accordingly, for the purposes of this submission, we are unable to advise of their position in relation to it.

Items 18 and 19: Clause 14.4 of the Exposure Draft³

11. Ai Group addressed items 18 and 19 in its correspondence to His Honour dated 6 July 2018.

³ Statement at [13] – [14].

Item 35: Clause 25.3(c) of the Exposure Draft⁴

12. On 13 July 2018, Ai Group and United Voice were granted an extension of time to file a joint report in relation to item 35 until 3 August 2018.

Item 12: Clause 12 of the Exposure Draft⁵

13. Ai Group does not wish to make any further submissions about item 12 but continues to rely on its submissions made earlier.

Item 13: Clause 13 of the Exposure Draft⁶

14. Ai Group considers that the proposed clauses 13.1 – 13.4 at paragraph [33] of the Statement is broadly consistent with the current clause 24.1, save for the following matter:

- A) We suggest that clause 13.4 is amended by replacing the reference to 'clause 13.1(a)' with 'clause 13.1'. Clause 13.4 refers to *an agreement arranged under clause 13.1(a)*, however subclause (a) states only that ordinary hours may be worked on any day of the week. Clause 13.4 should encapsulate all of clause 13.1.

Item 32: Clause 23.6(c) of the Exposure Draft⁷

15. Clause 24.6 of the award is in the following terms: (our emphasis)

24.6 Call back for non-cleaning purposes

(a) Despite anything else to the contrary elsewhere in this award, an employee directed by the employer to attend the employer's premises and/or the premises of a client of the employer to perform administrative duties or for disciplinary or counselling interviews, after leaving the place of employment (whether notified before or after leaving the place of employment), must be paid as specified below:

(i) where such attendance is required on a Monday to Friday, the employee must be paid a minimum payment of two hours at the appropriate ordinary time rate plus any applicable shift penalty for each such attendance;

⁴ Statement at [18].

⁵ Statement at [26] – [27].

⁶ Statement at [28] – [34].

⁷ Statement at [37] – [40].

(ii) where such attendance is required on a Saturday, the employee must be paid a minimum payment of three hours at the appropriate Saturday rate for each such attendance;

(iii) where such attendance is required on a Sunday the employee must be paid a minimum payment of four hours at the appropriate Sunday rate for each such attendance.

(b) This clause will only apply where the employee is specifically directed by the employer to attend the employer's premises and/or the premises of a client of the employer to perform duties contemplated by clause 24.6(a). It will not apply where a period of attendance is continuous with the completion or commencement of ordinary working time or overtime in clause 28.

(c) This clause does not apply where an employee is required to attend an employer's premises, or any other premises, for the purposes of completing any form of paid training.

16. Clause 24.6(a) of the award:

A) Expressly states that it applies *despite anything else to the contrary elsewhere in this award*. This statement clearly means that the provision overrides any other award provision that might apply in the relevant circumstances. This necessarily includes any award provisions that prescribe an alternate rate of pay for the performance of overtime or 'call-backs' in other circumstances.

B) Requires payment on Monday – Friday at the *appropriate ordinary time rate plus any applicable shift penalty*. This clearly excludes, for example, overtime rates.

C) Requires payment on Saturday and Sunday at the *appropriate Saturday rate and appropriate Sunday rate*, respectively.

17. Clause 23.6(c) of the Exposure Draft, by contrast, requires payment where an employee is called back for non-cleaning purposes *at the rate of pay otherwise applicable (including overtime and penalty rates)*, regardless of the day of the week on which the work is performed. Self-evidently, this is a different proposition to that which is contained in the current award clause and amounts to a substantive change.

18. The changes proposed by Ai Group to clause 23.6 of the Exposure Draft (as set out at paragraph [37] of the Statement) are intended to address our concerns and maintain the substantive operation of the current clause, whilst clearly articulating the rate of pay that is due in the circumstances listed at clause 23.6(d).