

Australian Industry Group

# 4 YEARLY REVIEW OF MODERN AWARDS

## **Submission**

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

**21 September 2018**

**Ai**  
GROUP

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

**Introduction**

1. On 10 September 2018, the Fair Work Commission (**Commission**) published a revised ‘plain language exposure draft’ (**Exposure Draft**) of the *Cleaning Services Award 2010* and a ‘draft list of outstanding items’ (**Draft List**).
2. On 11 September 2018, interested parties were “invited to review the [Exposure Draft] and list of outstanding issues and to advise the Commission as to whether there are any further issues that require determination” by 21 September 2018.
3. The Australian Industry Group (**Ai Group**) files this submission in response to that invitation. To the extent that Ai Group has had an opportunity to consider alternate proposals put by the draftsman or identified additional issues arising from the amendments made to the Exposure Draft, our submission also deals with those. We note however that we have not undertaken a comprehensive review of the Exposure Draft to identify such issues for the purposes of this submission.

**Item 3: Clause 9 of the Exposure Draft**

4. In a submission dated 24 July 2018, Ai Group proposed a form of words for clause 9 of the Exposure Draft.
5. Ai Group has considered the amendments proposed by the drafter to Ai Group’s proposal.<sup>1</sup> We do not oppose the changes proposed.

**Item 4: Clause 10.1 of the Exposure Draft**

6. The Draft List identifies that item 4 remains outstanding.

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<sup>1</sup> Attachment A to Draft List.

7. In addition to the submissions previously made in relation to this issue, Ai Group notes that the Commission recently issued a decision concerning the plain language redrafting of the *Clerks – Private Sector Award 2010*, in which the Full Bench considered a similar issue raised by Ai Group:

[40] Following the January Statement Ai Group raised concerns about clause 10.1 of the revised PLED.<sup>37</sup> Ai Group submitted that clause 10.1 is substantively different to clause 11.1 of the current award.

[41] Clause 11.1 of the current award provides: ‘11.1 A part-time employee is an employee who is engaged to perform less than the full-time hours at the workplace on a reasonably predictable basis.’

[42] Clause 10.1 of the revised PLED provides: ‘10.1 An employee who is engaged to work for fewer ordinary hours than 38 per week (or the number mentioned in clause 9.2 (Full-time employment)) and whose hours of work are reasonably predictable is a part-time employee.’

[43] In correspondence dated 16 October 2017,<sup>38</sup> Ai Group submitted that the current award clause defines an employee as a part-time employee if the employee is engaged to work less than full-time hours on a reasonably predictable basis. Ai Group submitted that clause 10.1 deems that an employee engaged to work less than full-time hours on a reasonably predictable basis is a part-time employee. Ai Group submitted that an employee who works less than full-time hours on a reasonably predictable basis may also be a casual employee. The distinction that Ai Group raise is that the part-time employee must be engaged to work that pattern whereas a casual employee may happen to work that pattern, but is not specifically engaged to do so. A casual employee is engaged to work on a casual basis. Ai Group submitted this distinction is blurred by the re-drafting.

[44] Ai Group submitted that clause 10.1 should be amended as follows (changes in red):

‘10.1 A part-time employee is an An employee who is engaged to work for fewer ordinary hours than 38 per week (or the number mentioned in clause 9.2 (Full-time employment)) ~~and whose hours of work are on a~~ reasonably predictable basis ~~is a part-time employee.~~’

[45] ABI supported the amendment proposed by Ai Group.

[46] We agree that the plain language re-drafting may subtly affect the meaning of clause 10.1. We propose to adopt the amendment to clause 10.1 proposed by Ai Group as set out in paragraph [44].<sup>2</sup>

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<sup>2</sup> 4 yearly review of modern awards – Plain language re-drafting – Clerks— Private Sector Award [2018] FWCFB 5553 at [40] – [46].

8. We submit that, consistent with the approach there adopted by the Commission, the Full Bench should adopt the changes we have proposed to clause 10.1 of the Exposure Draft.

**Item 9: Clause 11.3 of the Exposure Draft**

9. Ai Group’s submission concerning clause 11.3 appears to remain outstanding,<sup>3</sup> however it is not identified in the Draft List.

**Items 36 and 37: Clause 24.4 of the Exposure Draft**

10. Ai Group’s submission concerning clause 24.4 appears to remain outstanding,<sup>4</sup> however it is not identified in the Draft List.
11. The Exposure Draft notes that the clause has been “referred to be dealt with close-down provisions in other awards [2017] FWC 5861”. The statement referenced<sup>5</sup> deals with close down provisions only to the extent that they give rise to an issue concerning continuity of service. However, Ai Group’s submissions regarding clause 24.4 do not relate to continuity of service. Rather, Ai Group’s submissions identify certain substantive changes that have been made to the current shutdown clause in the Exposure Draft. We continue to press those submissions.

**Item 40: Clause 23.6 of the Exposure Draft**

12. The Draft List identifies that item 40 remains outstanding.
13. Ai Group has considered the amendments proposed by the drafter.<sup>6</sup> We do not oppose the changes proposed.

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<sup>3</sup> Ai Group Further Submission dated 17 November 2017 at paragraph 31.

<sup>4</sup> Ai Group Further Submission dated 17 November 2017 at paragraph 31.

<sup>5</sup> *4 yearly review of modern awards—Annual leave* [2017] FWC 5861.

<sup>6</sup> Attachment A to Draft List.

## **Cross-Referencing Errors**

14. Ai Group has identified the following cross-referencing errors arising from the Exposure Draft:

- Clause 13.3 of the Exposure Draft should refer to “clause 13.1(b)” instead of “clause 1.1(a)”.
- Clause 13.4 of the Exposure Draft should refer to “clause 13.1(b)” instead of “clause 1.1(a)”.
- The second clause 17.6(a) should be renumbered “clause 17.6(b)”.
- The reference to “clause 17” in Note 2 under clause 17.6 should be replaced with “clause 17.6”.