



HOUSING INDUSTRY ASSOCIATION



# Housing Australians



Submission to the  
Fair Work Commission

**AM2016/15 – Plain Language Re-Drafting**

22 March 2019



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## 1. INTRODUCTION

- 1.1.1 HIA refers to the Fair Work Commission (**Commission**) Full Bench Statement<sup>1</sup> dated 28 February 2019 (**Statement**) setting out the current status of matters before the Plain Language Full Bench, and the next steps in the plain language project.
- 1.1.2 The Statement outlines several provisional views of the Full Bench, and seeks views on these matters by interested parties.
- 1.1.3 HIA provides comments in response to Statement with respect to the *Building and Construction Onsite Award 2010* (**Onsite Award**), and the *Joinery Building Trades Award 2010* (**Joinery Award**) of which it maintains an interest.
- 1.1.4 At the time of providing this submission the latest exposure drafts for the Onsite Award and Joinery Award were published in May 2016. HIA's submission is therefore based on the 4 yearly review of modern awards- Constructions awards (AM2016/23) Decision (**Construction Awards Decision**)<sup>2</sup> in conjunction with the May 2016 exposure drafts.

## 2. PLAIN LANGUAGE REDRAFTING

- 2.1.1 At paragraph 13 of the Statement the Commission provides a provisional view that the Onsite Award not be redrafted in plain language at this time.
- 2.1.2 HIA notes at paragraph 14 the Commission states that in 2020 consideration will be given to the further re-drafting of the Onsite Award using the residual framework in the *Fair Work Act 2009* (Cth) (the Act) despite the repealed provision for 4 yearly reviews of modern awards.
- 2.1.3 In light of the Commissions comments in relation to time constraints for the finalisation of the review, and the substantive changes made to the Onsite Award, HIA is not opposed to the Commissions provisional view. Notwithstanding this view, for the sake of clarity, HIA is not opposed to the Onsite Award continuing through the plain language 'light touch' process.

## 3. PLAIN LANGUAGE 'LIGHT TOUCH'

### 3.1 ANNUAL, WEEKLY AND HOURLY RATES IN MINIMUM WAGE TABLES

- 3.1.1 HIA notes at paragraph 27 of the Statement the Commission has reached a provisional view that all exposure drafts insert the words 'full time employees' below the heading of the column containing minimum weekly rates of pay as suggested by Ai Group for the *Cement and Lime Industry Award 2010*.<sup>3</sup>
- 3.1.2 HIA opposes the adoption of this approach in the Onsite Award and Joinery Award.

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<sup>1</sup> [2019] FWCFB 1255

<sup>2</sup> [2018] FWCFB 6019

<sup>3</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201465andors-sub-ajg-230916.pdf>



### *Onsite Award*

- 3.1.3 Minimum weekly rates within the Onsite Award are not confined to full-time employment. The Onsite Award has four types of employment, daily hire, full-time weekly hire, part-time weekly hire, and casual. As such adding 'full time employee' against the minimum weekly rate in clause 19.1(a) may in fact cause more confusion and is inconsistent with the language used throughout the award. For example, the Onsite Award refers to daily hire employees, and weekly hire employees in the context of clause 19.3, hourly rate calculation. The proposed language is also at odds with the definition of 'ordinary time hourly rate' in clause 3 of the Onsite Award which assists the reader to carry out the calculation of the applicable rate of pay.
- 3.1.4 Additionally, the current wording of Clause 19.1(b) sufficiently explains the application of the minimum weekly wage by reference to clause 3 which sets out how the minimum weekly wage applies to an employee's applicable type of employment:

*19.1(b) The rates in clause 19.1(a) prescribe minimum classification rates only. The payment of additional allowances is required by other clauses of this award in respect of both weekly and hourly payments. The ordinary time hourly rate for an employee's classification is set out in clause 3.*

- 3.1.5 As such HIA opposes the provisional view.

### *Joinery Award*

- 3.1.6 Clause 18.2 of the Joinery Award which immediately follows the minimum wages table at clause 18.1, provides a meaning of 'minimum weekly rate':

*18.2 For the purposes of clause 18.1, any entitlement to a minimum wage expressed to be by the week means any entitlement which an employee would receive for performing 38 hours of work.*

- 3.1.7 As such HIA does not see the addition of the proposed words outlined in the provisional view as necessary.

## **3.2 CROSS-REFERENCES IN COVERAGE CLAUSES**

- 3.2.1 HIA understands that Ai Group raised an issue regarding cross-references to the 'industry' in the coverage clause of the *Market and Social Research Award 2010*.<sup>4</sup>
- 3.2.2 The Commission subsequently identified this cross-referencing issue as a common issue, as highlighted in paragraphs 29-32 of the Statement.
- 3.2.3 HIA notes the Commission has reached a provisional view outlined at paragraph 33 of the Statement to resolve cross referencing issues relating to on-hire employees and group training services, by referring to the relevant industry instead of a clause reference.

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<sup>4</sup> Paragraph 29



### Onsite Award

- 3.2.4 Clauses 4.6 and 4.7 of the Onsite Award as they relate to on-hire and group training services coverage, reference Clause 4.1 as the defined industry for coverage purposes.
- 3.2.5 Clause 4.1 of the award confirms the Onsite Award provides coverage for employers and employees in the on-site building, engineering and civil construction industry, whilst clause 4.10 defines the industry for the purposes of clause 4.1.
- 3.2.6 Accordingly HIA acknowledges that the cross reference issue in Clauses 4.6 and 4.7 of the Onsite Award can be remedied in line with the Commissions provisional view as follows:

*4.6 This award covers any employer which supplies labour on an on-hire basis in the **on-site building, engineering and civil construction** industry ~~set out in clause 4.1~~ in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.*

*4.7 This award covers employers which provide group training services for apprentices and/or trainees engaged in the **on-site building, engineering and civil construction** industry and/or parts of industry ~~set out at clause 4.1~~ and those apprentices and/or trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award.*

### Joinery Award

- 3.2.7 Clauses 4.4, 4.5 and 4.7 of the Joinery Award as they relate to on-hire and group training services coverage, reference Clause 4.8(a) and 4.8(b) as the defined industry and occupations for coverage purposes.
- 3.2.8 Such reference to Clause 4.8 is correct, as the clause defines the joinery and building trades industries and occupations.
- 3.2.9 It is HIA position that the provisional view is not relevant for the purposes of the Joinery Award. As such, the provisional view is opposed.

## 4. OTHER MATTERS REFERRED TO THE PLAIN LANGUAGE FULL BENCH

### 4.1 TERMINOLOGY OF RATES

4.1.1 HIA has identified three matters raised by the Commission at paragraph 59-72 of the Statement.

#### *Problems with terminology*

4.1.2 HIA understands that an issue has arisen regarding the inconsistent characterisation of premiums payable under awards.

4.1.3 HIA understands that such matters will be dealt with on an award by award basis during the light touch process. HIA will avail itself of the opportunity to make submissions on those matters when appropriate.

#### *Interaction between penalty rate clauses and annual leave loading*

4.1.4 At paragraph 67 the Commission seeks views on the adoption of a re-drafted annual leave loading clause in all awards.

4.1.5 HIA does not oppose responding to ambiguities that may arise from a difference in how loadings are expressed in awards. As such HIA does not oppose the preliminary view.

4.1.6 However, HIA reserves the right to re-evaluate this position once further updated exposure drafts have been released.

#### *Drafting – Shift Loading vs Annual Leave Loading*

4.1.7 It is HIA's view that the formulation of the provisions in the Onsite and Joinery Award in terms of the matters outlined in paragraphs 587-591 of *4 yearly review of modern awards – Award stage – Group 3* [2017] FWCFB 5536 are not problematic.

4.1.8 As such, at this stage HIA would oppose any change to these provisions. HIA does acknowledge that such matters may be revisited as part of the plain language light touch process once further revised exposure drafts have been released.

### 4.2 SHUTDOWN PROVISIONS

#### *Model Clause*

4.2.1 HIA notes that Attachment D to the Statement includes a model term for shutdown provisions (**Model Shutdown Clause**). The Commission is seeking submissions as to whether modern awards should be varied to include the Model Shutdown Clause.<sup>5</sup>

4.2.2 The Model Shutdown Clause is substantially different to the current shutdown provisions in Clause 38.3 of the Onsite Award, and Clause 32.9 of the Joinery Award.

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<sup>5</sup> Paragraph 84



- 4.2.3 In the course of proceedings in AM2016/23 – Construction Awards no party has agitated for any change to the shutdown provisions of the Onsite and Joinery Awards.
- 4.2.4 It is HIA's view that the shutdown provisions within the Onsite and Joinery Awards are well understood, and at this preliminary stage there is no need to adopt the Model Shutdown Clause.

#### *Continuous Service*

- 4.2.5 HIA notes at paragraph 84 that the Commission is seeking views as to whether unpaid leave taken during a shutdown period counts as service.
- 4.2.6 It is HIA's view that the definition of service for the purposes of a shut down period within an award is principally determined by section 22 of the Act, unless otherwise provided for under the relevant modern award.
- 4.2.7 It is clear within the meaning of section 22(2)(b) of the Act that any period of unpaid leave does not count as service. This approach should be adopted in relation to the Onsite Award, which remains silent on this issue.
- 4.2.8 In contrast the Joinery Award expressly deals with the matter and provides for a greater entitlement, as Clause 32.9 states: *'(d) any leave taken by an employee as a result of a close-down pursuant to clause 32.9 also counts as service by the employee with their employer'*.

### **4.3 HOURLY RATES OF PAY SCHEDULES**

- 4.3.1 HIA refers to paragraphs 87 to 95 of the Statement which highlights proposed changes to hourly rates of pay schedules.

#### *Onsite Award*

- 4.3.2 A number of matters proposed to be included in rates tables are still under consideration by the Commission, in fact the May 2016 exposure draft Onsite Award noted that:

*'A summary of hourly rates of pay under this award has not been include in this exposure draft. These table may be prepared once applications to vary allowances provision have been determined by the full bench'*

- 4.3.3 This comment remains relevant. As such HIA reserves the right to comment on hourly rates of pay schedule should one be inserted into the Onsite Award.

#### *Joinery Award*

- 4.3.4 On reviewing Schedule B of the May 2016 exposure draft Joinery Award further clarification is required. For example, only on carrying out further calculations is it clear that the wage rates table at B.2.1 does not include an industry allowance (due to those rates applying to those not engaged in engaged on joinery work, shopfitting, stonemasonry, outside work, or engaged on factory glazing) compared to wage rates table at B.3.1 which does include the relevant industry allowance due to those rates applying



to those engaged on joinery work, shopfitting, stonemasonry, outside work, or other than factory glazing.

- 4.3.5 As such HIA supports the provisional view outlined at paragraph 95, however reserves the right to make further comments on such matters as further versions of the exposure draft is released.

