

Australian Industry Group

# 4 YEARLY REVIEW OF MODERN AWARDS

## **Submission**

Review of the Business Equipment  
Industry Award Exposure Draft

**16 MAY 2016**

**Ai**  
GROUP

# **Business Equipment Award - Response to Directions of 2 May 2016**

1. On 2 May 2016 the Commission issued Directions setting out proposed amendments to clause 10.2 of the Exposure Draft for the Business Equipment Award 2015 (“the Exposure Draft”).
2. Ai Group is opposed to elements of the proposed new clause 10.2.
3. We are concerned that the proposed variations will, in various respects, either impose new obligations on employers or create new entitlements for employees and should accordingly not be made in the context of the current proceedings. We advance these submissions on the assumption that the Commission is not seeking to alter the substantive entitlements, in such a manner, absent either a specific statutory compulsion to do so or broad agreement as to the merits of the variation.
4. Our specific concerns are outlined below. They are identified by reference to the clauses proposed to be caught by the new wording of clause 10.2.

## **Part 1 – Application and Operation**

5. Part 1 should not be referenced in its entirety.
6. Ai Group does not oppose the provisions of clause 1 being referenced in clause 10.2, provided clause 1.5 is excluded. The employees caught by clause 10.2 do not currently have the benefits of the transitional provision dealing with an employee’s “take home pay.” There is no reason why it should be now extended to them.
7. There is no necessity that clause 2. *The National Employment Standards and this award*, be caught by clause 10.2. On one view the clause does not apply to the excluded employees in any real sense.
8. Ai Group has not identified any difficulty with clause 3 being caught by clause 10.2.

9. Ai Group does not oppose clause 4. *Award flexibility* being caught by clause 10.2. It appears necessary to ensure the award conforms with section 144 of the Fair Work Act 2009 (“the Act”).
10. There is very little utility in having clause 5.1 apply to the employees referred to in clause 10.2. The provision is essentially a guide or list of facilitative provisions in the award and most have no application to the exempt employees.

## **Part- 2 – Types of Employment**

11. The application of clauses 6.1 to 6.3 may not be appropriate in the context of the employees referred to in clause 10.2.
12. Clause 6.2(a), as drafted, provides that a full-time employee is engaged to work 38 ordinary hours per week. Clause 6.2(b) provides, in effect, that an employee not specifically engaged as a part-time or casual employee is for all purposes of this award a full-time employee.
13. The part-time provisions of the award are fairly restrictive in that they contemplate a part-time employee as working a, “...*regular pattern of hours*” and being “...*paid the minimum hourly rate for each hour worked*”.
14. It is not clear that part-time employees covered by the exemption would work a regular pattern of hours or be paid the minimum hourly rate for each hour worked.
15. It is similarly not clear that employees falling within the exemption but potentially working less than 38 hours per week have been, “*specifically engaged*” as part-time employees. They would accordingly arguably constitute full-time employees pursuant to 6.2(b) and arguably be entitled to receive an average of 38 ordinary hours of work per week. This can have implications for the determination of entitlements under the award, NES and relevant superannuation legislation.

16. Clause 6.4 - *Casual employees*, is unlikely to have any relevance to the category of excluded employees.
17. Ai Group suggests that clauses 6.1 to 6.4, as drafted, should not be applied to the employees referred to in clause 10.2.
18. If the Commission has suggested the inclusion of a reference to the part dealing with “Types of employment” in order to address a technical deficiency in the award, it may be a matter that can be discussed in more detail during the conference.

#### **Part 4 – Wages and Allowances; clause 9.1 and 9.2**

19. These elements of the award do not currently apply to the excluded employees. It is not apparent that there is a necessity to extend their application as proposed. The provisions merely operate as a reference point for the identification of employees exempt pursuant to 10.2.
20. The application of the minimum hourly and weekly rate provisions to employees, as drafted, is not appropriate in the context of employees referred to in clause 10.2.

#### **Part 6 – Types of Employment**

21. The proposal would extend the employee entitlements provided by the following clauses:
  - 22.3 and 23.4 (Job search entitlement)
  - 23.2 (Transfer to lower paid duties)
  - 23.3 (Employees leaving during notice period)
22. These provisions should not apply to employees the subject of clause 10.2.

#### **Part 7 – Consultation and Dispute Resolution**

23. There is no necessity to extend the application of the entirety of clause 24 to

the excluded category of employee. Ai Group contends that clause 10.2 alleviates the employer of any award derived obligation to consult such employees pursuant to this provision.

24. We do not however oppose the inclusion of a reference to clause 24.2 (Consultation about changes to rosters or ordinary hours of work), being inserted into the Award. This is arguably necessary to ensure the award is consistent with section 145A of the Act.
25. Ai Group does not oppose the inclusion of a reference to clause 25 (Dispute resolution) in clause 10.2. This is arguably necessary to ensure the award is consistent with s.146 of the Act.

### **Ai Group proposed clause 10.2**

26. Ai Group would not oppose the insertion of the following provision in the Exposure Draft in lieu of the current clause 10.2:

*“Except as to:*

- (a) clause 1 Title and Commencement (not including clause 1.5);*
- (b) clause 3 Coverage;*
- (c) clause 4 Award flexibility;*
- (d) clause 17 Annual leave;*
- (e) clause 18 Personal/Carer’s leave;*
- (f) clause 20 Community service leave;*
- (g) clause 22 Termination of employment (not including clause 22.3);*
- (h) clause 24.2 Consultation about changes to rosters or ordinary hours of work; and*
- (i) clause 25 Dispute resolution;*

*the terms of this award will not apply to any employee in the Clerical stream in receipt of a salary which exceeds the appropriate rate prescribed in clause 9.2 in which they are employed by 10%.”*