

FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

Matter No: AM2014/287

Surveying 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 *Surveying 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 DRAFT

Clause 14 – Ordinary hours of work

4. The question posed in the exposure draft relates to the period over which the working of 38 ordinary hours per week is to be averaged. From the Association's enquiries it would appear that the wording in Clause 14.1 which refers to "*The ordinary hours of work must not exceed*

¹ [2014] FWC 8837

an average of 38 per week” first appeared in an exposure draft released by the Commission on 22nd May 2009 in Matter AM 2008/57 – Technical Services. Up until that time, the pre-reform Land Surveyors General – Award 1998 at Clause 6.1.1 provided that *“The hours of ordinary week’s work must not exceed 38 per week”*. There were averaging provisions contained in NAPSAS including the *Professional Surveyors (Private Industry) Award – State (NSW)*; *Surveying (Private Practice) Award – State (QLD)* and the *Surveyors (Private Industry) Award (TAS)*. However, there was no consistency in the definition of the averaging period contained in these provisions as these were all different. Accordingly, it is APESMA’s view that in the absent of any clarity then the default position is that the ordinary hours should not exceed 38 per week.

Clause 16 – Breaks

5. The query in respect of Clause 16.2(b) relates to the words *“without ceasing work”* in Clause 16.2(b). This sub-clause needs to be understood in the context of a comparison with 16.2 (a) where a 10-minute rest period is prescribed. Established custom and practice would interpret *“without ceasing work”* as an ability for the employee to enjoy a beverage whilst remaining in the immediate work environment etc.

Clause 20- Overtime and penalty rates

6. The suggested amendment to Clause 20.1 which would include the specific reference to the requirement that penalty rates are paid *“in excess of or outside the spread of ordinary hours”* would assist in the clarification of this existing entitlement and is therefore supported by APESMA.

Clause 20.2 – Time off instead of payment for overtime and 20.3 – Sundays and public holidays.

7. In response to the question whether references to *“work on a Sunday”* in clauses 20.2 and 20.3(c) are necessary APESMA would suggest that on balance that they are. The specific references to *“Sunday”* assist in clarifying the entitlement and avoiding potential ambiguity.

Clause 24 – Public holidays

8. Regarding whether it is necessary to retain in Clause 24.2 the definition of work performed on a public holiday to be *“deemed to be work in excess or outside of ordinary hours of duty”* APESMA’s view is the same as outlined in Paragraph 7 above in that the words assist in the clarification of the entitlement and the avoidance of ambiguity.

Schedule E – School – based Apprentices

9. In respect of Schedule E – School-based Apprentices APESMA supports the deletion of this provision on the basis that it serves no purpose.

10. In addition to the abovementioned matters the Association notes the Decisions of the Fair Work Commission in respect of Part-time employment; Overtime and penalty rates; Annual leave; and Part-day public holidays.

CONCLUSION

11. There are no additional matters which the Association wishes to raise.

Submitted by:

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