



SUBMISSION ON BEHALF OF THE AUSTRALIAN FEDERATION OF
EMPLOYERS AND INDUSTRIES (AFEI)

AM2008/23

AWARD MODERNISATION

AFEI
Australian Federation of
Employers & Industries

BEFORE THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

AWARD MODERNISATION

MATTER NO. AM2008/23

SANITARY AND GARBAGE DISPOSAL SERVICES

DRAFT EXPOSURE DOCUMENTS

WASTE MANAGEMENT INDUSTRY AWARD 2010

1. AFEI makes the following submissions in respect of the Waste Management Industry Award 2010 (the draft award) released by the Full Bench of the AIRC on 23 January 2009.
2. AFEI notes that the draft award has been drafted with regard to the existing federal award is entitled the *Transport Workers' (Refuse, Recycling and Waste Management) Award 2001* which applies across Australia with the exception of New South Wales and the Australian Capital Territory.
3. AFEI has consulted with its members regarding the draft award and makes the following submissions in relation to particular clauses in the draft award.

Casual employees

4. The Commission has decided on a general standard of 25 per cent for the casual loading in modern awards. The Commission notes that *"In some areas transitional arrangements may be necessary to cushion the impact of the change"*. para 20, Statement of the Full Bench [2008] AIRCFB 717)
5. Presently, the Transport Workers (Refuse, Recycling and Waste Management –ACT) Award provides for a 15% loading and the two NSW NAPSAs provide for a 20% loading. AFEI maintains that 20%

is the appropriate safety net standard for the industry. If the general 25% standard is adopted, transitional arrangements may be necessary to deal with this change for ACT and NSW employers.

6. Other provisions in the draft award which have the potential to increase costs for casuals in this industry are:

Clause 27 - Shiftwork

- Casual employees are to be paid the casual 25% loading in addition to shift loading.

Clause 33 - Weekends and public holidays

- A casual employee required to work on a public holiday is to be paid 25% of their minimum wage in addition to any payment due for work on public holidays.

Clause 33.2 (a) - Public holidays states that

- (a) Any employee required to work on a public holiday must be paid 200% of the appropriate minimum wage calculated hourly for time worked plus 7.6 hours pay at the appropriate minimum wage.

Clause 33.2

- (d) A casual employee required to work on a public holiday is entitled to be paid 25% of the appropriate minimum wage in addition to any payment due under this clause.

7. This has the effect of requiring casuals to be paid 325% of the minimum rate on public holidays.
8. The extension of the requirement for 7.6 hours wages to be paid in addition to hours worked on public holidays (at 200% of the minimum wage) to casual employees is opposed.
9. Further, AFEI submits the expression of casual loading in the draft award (at clause 13.4) should clearly state that it is paid in

compensation for annual leave, personal/carers leave, notice for termination of employment and redundancy.

Part time employees

10. The requirement that an employer must pay a part-time employee at overtime rates for all time worked in excess of the agreed hours (clause 12.5) should be removed.
11. AFEI submits that part time employees should be paid overtime rates for time worked in excess of 38 hours per week, not for all time worked in excess of the agreed hours.

Time off instead of payment for overtime

12. Clause 32.1 provides that an employee may agree in writing with their employer to take time off instead of payment for overtime.
13. This provision is supported so long as the requirement that this is by agreement is retained. An entitlement to time off without agreement would be disruptive and costly for those operations who do not have the flexibility or capacity to cover staff on leave.

Public Holidays (Clause 33.2)

14. The requirement to pay a penalty of 200% in addition to payment of 7.6 hours for work on a public holiday should not be extended. Extension of this will require all employers to pay 300% for work on a public holiday, (the NSW NAPSA provision) where the standard payment elsewhere is an additional 150% in addition to ordinary time earnings, a total penalty of 250%.

Annual Leave

Clause 34 does not contain provisions for

- annual or temporary close down
- employees to be required to take accrued annual leave.

15. AFEI submits that this and all modern awards should include provisions which allow annual leave to be taken where the business is temporarily closed down, including circumstances beyond the employer's reasonable control. AFEI also submits that modern awards should include provisions which permit an employer to direct an employee to take annual leave which has accrued beyond the current year of entitlement.

Shift Work

16. AFEI supports clause 27.1 (f) concerning employees engaged in the collection of domestic, recycling, sanitary or litter bins. This clause suggests that such employees would not be entitled shift loadings when performing such work. We note this is consistent with existing provisions in the Transport Industry -Waste Collection and Recycling (NSW NAPSA).
17. To facilitate the making of a modern award that is 'simple to understand' and 'easy to apply' we suggest the insertion of 'in addition to the ordinary time rate of pay for such work' at the end of the current clause. Our suggested amendment is not intended to alter the meaning of this provision but is suggested to ensure the provision is correctly understood.

Transitional Arrangements

18. AFEI notes the Commission's comments regarding existing classifications in NSW NAPSA's at paragraph 112 of the Statement

issued on 23 January 2009. AFEI recognises that consideration will need to be given to this issue when transitional provisions are developed.

19. It is submitted that integration of the NAPSA classifications into the federal award structure be considered when the transitional arrangements in the legislation under which the award will operate have been set in place.