

**AWARD MODERNISATION SUBMISSIONS AND  
DRAFT AWARD PROVISIONS**

**STAGE 4**

**AM2008/79 – Health and Welfare Services  
(Remainder) – Social and Community Services**

***Exposure Draft – Employment Services  
Industry Award 2010***

**Joint Submission of Ai Group and the RCSA**



**16 October 2009**

**AWARD MODERNISATION – STAGE 4**  
**AM2008/79 – HEALTH AND WELFARE SERVICES**  
**(REMAINDER) – SOCIAL AND COMMUNITY SERVICES**

**Employment Services Industry Award 2010**

1. This submission is made jointly by the Australian Industry Group (Ai Group) and the Recruitment and Consulting Services Association (RCSA).
2. Ai Group represents approximately 10,000 employers in many industry sectors.
3. The RCSA is the professional body for the on-hire, recruitment and workforce solutions sector in Australia and New Zealand. It represents over 3,600 member companies and accredited professional recruiters.
4. In addition to this joint Ai Group / RCSA submission which focuses on the recruitment and consulting aspects of the *Exposure Draft – Employment Services Industry Award 2010*, Ai Group has filed a separate submission dealing with the group training sector in which it has a major involvement.
5. Ai Group and the RCSA are concerned about the coverage of the exposure draft as presently drafted. The coverage provisions are not sufficiently clear or precise with regard to the definition of the "labour market assistance sector".

6. The definition in clause 3.1 states:

*"labour market assistance sector means the provision of work placement, job searching, personal support, vocational training and related services in the welfare sector to assist persons seeking employment"*

7. While some of the services listed are perhaps not generally provided by the broader on-hire/recruitment industry (such as "personal support") the key word in the definition delineating coverage is "welfare sector". In Ai Group's view, this term is not sufficiently precise.

8. Ai Group and the RCSA have had discussions with the National Employment Services Association (NESA) – the organisation which originally proposed the Employment Services Modern Award.

9. Ai Group, the RCSA and NESA have reached agreement on the following amendment to the definition of "labour market assistance sector" to clarify the coverage:

*"labour market assistance sector means the provision of work placement, job searching, personal support, vocational training and related services in the welfare sector delivered by arrangement or contract with federal and State governments, to assist persons seeking employment.*

*arrangement or contract with federal or state government does not include the delivery of recruitment, outplacement, on-hire or similar services to federal or state government to address its own workforce needs.*

10. The agreed amendment reflects the widely accepted meaning of "Labour Market Assistance Program". Such programs are conducted under contract with Federal and/or State Governments.

11. The agreed amendment ensures that the very large number of Ai Group and RCSA member companies which provide recruitment, outplacement, on-hire and similar services to businesses which are not delivering Labour Market Assistance Programs are not covered under the award.
12. To impose a modern award, including the *Employment Services Industry Award 2010*, upon recruitment, on-hire, workforce management and the wider employment services industry (a term extending beyond the Job Services Australia services sector) and related consulting businesses would be contrary to the *Fair Work Act*.
13. Most professionals and managers in the recruitment and consulting services industry are award-free and paid an annual salary which is inclusive of remuneration for the quantity of time worked and the times when work is performed. In contrast, the *Employment Services Industry Award 2010* covers managers and professionals and incorporates inflexible and prescriptive conditions for such classifications (eg. overtime penalties).

## **Title**

14. Ai Group and the RCSA submit that the title which the Commission has proposed for the award is not appropriate and does not meet the requirements of the *Fair Work Act*.
15. To include a misleading title in a modern award would breach the Act which states that modern awards must “*simple*” and “*easy to understand*” (s.134(1)(g)).

16. As is evident from the Australian Bureau of Statistics Report in the **Annexure** the “Employment Services Industry” has a widely recognised meaning – a meaning which does not align with the coverage of the award<sup>1</sup>.

17. As set out in the introduction to the ABS Report:

*“For the purpose of this survey, Employment Services included organisations with a predominant activity of employment placement. Employment placement included: temporary labour hire by service providers to other businesses using their own employees, on a fee or contract basis, and placement of permanent or temporary staff directly employed by a client organisation. Organisations whose main income was generated primarily from other related employment services such as preparation of curricula vitae, counselling, training or other support services for job seekers, were excluded from the results of this survey.”*

18. The data collected by the ABS for the report clearly covered organisations which conduct services as part of government funded schemes, as well as the broader on-hire/recruitment industry. For example, data is presented on the proportion of placements which are "government supported placement activity", "other permanent placement activity" and "other temporary or contract placement activity"<sup>2</sup>.

19. The term “labour market assistance” is the key term in the exposure draft to define the coverage of the award and this term should appear in the title. In comparison, the term “employment services” does not appear elsewhere in the exposure draft, despite appearing in the title.

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<sup>1</sup> ABS, *Employment Services, Australia, 2001-2002* (8558.0)  
[http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/28997F55C9AFB9B9CA256D7900052963/\\$File/85580\\_2001-02.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/28997F55C9AFB9B9CA256D7900052963/$File/85580_2001-02.pdf)

<sup>2</sup> ABS, *Employment Services, Australia, 2001-2002* (8558.0), see above, at p 9

20. We submit that the appropriate title for the award is the *Labour Market Assistance Programs Award 2010* or, if this is not accepted, *the Employment Services (Labour Market Assistance Programs) Award 2010*.
21. The title of the exposure draft would lead to considerable confusion amongst businesses in the on-hire/recruitment industry, and their employees.
22. In the new award system, where it will take time for businesses to become familiar with the new set of modern awards and their coverage, a desirable starting point is for the titles of modern awards to accurately reflect the coverage of the award, so far as possible. The term "employment services" would be understood by many businesses in the on-hire/recruitment industry as encompassing their operations when most would not be covered by this award.
23. A further example of the current broad usage of the term "employment services" demonstrates the potential for confusion about the modern award's coverage if the title in the exposure draft is retained.
24. In New South Wales, the widely utilised NAPSA applying to employers in the on-hire industry in relation to clerical and administrative employees is the "*Clerical and Administrative Employees in Temporary **Employment Services (State) Award***" (emphasis added). Almost every business in the on-hire industry in NSW currently relies upon this NAPSA to determine wages and conditions of their clerical and administrative 'temporary' (on-hire) employees. The use of the term "employment services" in the award's title since 2000 has reinforced over time the connection between the term and the on-hire/recruitment industry. Using this term to define and title only a part of the true 'employment services' industry would be very unhelpful and misleading and would be inconsistent with the purpose of the award modernisation process.