

**AWARD MODERNISATION SUBMISSIONS AND
DRAFT AWARD PROVISIONS**

Stage 4

AM2008/85 – Labour Hire Services

Joint Submission of Ai Group and the RCSA



16 October 2009

AWARD MODERNISATION – STAGE 4

AM2008/85 – ‘LABOUR HIRE’ SERVICES

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. The ‘labour hire’ industry is a major sector of Ai Group’s membership and most of the major players in the industry are Ai Group members.
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, similarly including the major players in the industry, as well as accredited professional recruiters.

BACKGROUND

4. In its Statement of 25 September 2009, the Full Bench of the AIRC stated the following in relation to the coverage of employees of labour hire businesses by the modern awards made to date¹:
 - Employees of labour hire businesses already fall within the coverage of modern awards with occupational coverage, such as the Clerks Modern Award, the Manufacturing Modern Award and the Plumbing Modern Award;
 - Some other modern awards specifically deal with coverage of employees of labour hire businesses, such as the Mining Modern Award;
 - Despite the above, most modern awards do not cover employees of labour hire businesses.

¹ [2009] AIRCFB 865, at para 133.

5. The Full Bench identified two possible options for dealing with the coverage of employees of labour hire businesses, as being to create a separate modern award for the labour hire industry, or to modify the coverage of industry based modern awards. The Full Bench noted that no party had sought a separate award for the labour hire industry, and that there had also been limited support for a generic clause to be inserted into modern awards to deal with the issue of coverage of the industry.

6. The Full Bench concluded that:

“We have decided not to make a modern award for the labour hire industry, consistent with the general view of representatives of employers and employees. We think it is preferable that modern awards should be varied, where necessary, to extend their coverage to labour hire firms and their employees. This will result in a more consistent safety net as between direct and labour hire employees in the relevant industry.

This could be done on an award by award basis by application to vary. This will allow the particular circumstances of the industry to be considered and give all interested parties the opportunity to express a view. Such applications might be made immediately, where there exists an evident need to extend the coverage of a modern award to labour hire employees, with a view to the award being varied before it has effect”.

7. In submissions made as part of the Stage 4 pre-drafting process, Ai Group and the RCSA submitted that “nearly all modern awards would cover on-hire employees, similar to many existing federal awards and NAPSAs²”. This position was largely consistent with that of other major representative bodies including the ACTU.

² Joint submission of Ai Group and RCSA, 24 July 2009, p.3.

8. As noted above, the Full Bench in its Statement appears to have concluded that most modern awards do not presently cover labour hire businesses. Ai Group and the RCSA remain unsure as to whether this statement was intended to mean that labour hire employees are not covered by modern awards, as presently drafted, or merely that coverage of labour hire employees has not been dealt with expressly or clearly in modern awards.
9. We have made the assumption that the Commission has expressed a preference for modern industry awards clearly and expressly dealing with the coverage of labour hire businesses and their employees.
10. In view of the Commission's statement, Ai Group and the RCSA have considered how modern awards could provide greater clarity and remove any ambiguity about the coverage of labour hire businesses.
11. Towards this end, Ai Group and the RCSA have classified each of the modern awards made in Stages 1, 2 and 3 into four different categories:
 1. Modern awards which expressly deal with the coverage of the on-hire industry and which do not require variation;
 2. Modern awards which are occupational awards, hence covering on-hire businesses in relation to on-hire employees in those occupations;
 3. Modern awards into which a model clause can be inserted which clarifies the coverage of on-hire businesses providing labour to employers in the industries covered by the award; and
 4. Modern awards which require a different clause. (This category can be broken up into the following two sub-categories: (1) Modern awards which apply to specified employers; and (2) Modern awards which apply to both industries and occupations).

COVERAGE OF 'LABOUR HIRE' BUSINESSES BY MODERN AWARDS

12. Modern awards with occupational coverage generally apply to the on-hire industry and would not require variation.
13. With regards to the third category above, the model clause proposed by Ai Group and the RCSA is based on the concepts in the clauses in the *Contract Call Centres Award 2010* and the *Telecommunications Services Award 2010*.
14. Those clauses are in turn based on clauses in the *Contract Call Centre Industry Award 2003* and the *Telecommunications Services Industry Award 2002*. These clauses were jointly developed and agreed upon between Ai Group, the ACTU, the ASU, the CPSU, the CEPU and the NUW.
15. The proposed model clause is as follows:

*“XX. This award covers any business which supplies labour to a business in the **[insert industry]** on an on-hire basis in respect of on-hire employees in classifications covered by this award while engaged in the performance of work for a business in the **[insert industry]**. This clause operates subject to the exclusions from coverage in this award, so as to exclude any business which on-hires employees to an excluded business.”*
16. The last sentence in the above clause is not contained within the *Contract Call Centre Award 2010* or the *Telecommunications Services Award 2010* and has been included for abundant caution.
17. The term “on-hire” has also been used instead of “labour hire”, as it is a more contemporary term and it has a more precise meaning. An appropriate definition of on-hire is:

“On-hire means the on-hire of employees to a client, where such employees work under the general guidance and instruction of the client or a representative of the client”.

18. The model clause has the following elements all of which are vitally important:
 - On-hire businesses are covered if they supply labour to businesses in the industry covered by the award;
 - The labour needs to be supplied on an on-hire basis (ie. the award would not apply to suppliers who simply perform a recruitment consulting / candidate-placement service);
 - The clause only applies to on-hire employees;
 - The on-hire employees are only covered while they are engaged in the performance of work for a business in the industry covered by the award;
 - The clause operates subject to the exclusions from coverage in this award, so as to exclude any business which on-hires employees to an excluded business.

19. Consideration needs to be given on an award by award basis, as to whether the proposed model clause should be inserted and, if so, where in the coverage clause of award should it be inserted.

20. The on-hire industry is a very large and growing industry. There would be very few industries in which on-hire workers are not engaged. It is estimated that over 4% of Australia’s employed workforce are on-hire employees.

21. The sections below deal with the modern awards made during Award Modernisation Stages 1, 2 and 3.

CATEGORY 1: MODERN AWARDS WHICH EXPRESSLY DEAL WITH COVERAGE OF THE ON-HIRE INDUSTRY

22. The following modern awards contain clauses dealing expressly with the coverage of on-hire businesses and their employees and do not require any variation:

- *Aluminium Industry Award 2010;*
- *Black Coal Mining Industry Award 2010;*
- *Contract Call Centres Award 2010;*
- *Electrical Power Industry Award 2010;*
- *Mining Industry Award 2010;*
- *Telecommunications Services Award 2010.*

CATEGORY 2: OCCUPATIONAL AWARDS

23. The following modern awards are occupational awards, which cover employers in the on-hire industry in respect of employees in the relevant occupations, and do not require variation:

- *Air Pilots Award 2010;*
- *Architects Award 2010;*
- *Commercial Sales Award 2010;*
- *Clerks – Private Sector Award 2010;*
- *Hydrocarbon Field Geologists Award 2010;*
- *Nurses Award 2010;*
- *Plumbing and Fire Sprinklers Award 2010;*
- *Medical Practitioners Award 2010;*
- *Surveying Award 2010.*

24. Some of the above modern awards are industry and occupational awards but because of the extent of occupational coverage, on-hire employees would appear to be appropriately covered.

CATEGORY 3: MODERN AWARDS INTO WHICH THE MODEL CLAUSE CAN BE INSERTED

25. The model clause can be readily inserted into the following modern awards (in some cases with a minor variation as to formatting):

- *Aged Care Award 2010;*
- *Airline Operations – Ground Staff Award 2010;*
- *Amusement, Events and Recreation Award 2010;*
- *Asphalt Industry Award 2010;*
- *Banking, Finance and Insurance Award 2010;*
- *Book Industry Award 2010;*
- *Broadcasting and Radio Entertainment Award 2010;*
- *Building and Construction General On-site Award 2010;*
- *Business Equipment Industry Award 2010;*
- *Cement and Lime Award 2010;*
- *Cemetery Industry Award 2010;*
- *Cleaning Services Industry Award 2010;*
- *Concrete Products Award 2010;*
- *Dredging Industry Award 2010;*
- *Educational Services (Post-Secondary Education) Award 2010;*
- *Educational Services (Schools) General Staff Award 2010;*
- *Education Services (Teachers) Award 2010;*
- *Electrical, Electronic and Communications Contracting Award 2010;*
- *Fast Food Industry Award 2010;*
- *Food, Beverage and Tobacco Manufacturing Award 2010;*
- *Gas Industry Award 2010;*

- *General Retail Industry Award 2010;*
- *Hair and Beauty Industry Award 2010;*
- *Higher Education Industry – Academic Staff – Award 2010;*
- *Higher Education Industry – General Staff – Award 2010;*
- *Horse and Greyhound Training Award 2010;*
- *Horticulture Award 2010;*
- *Hospitality Industry (General) Award 2010;*
- *Hydrocarbons Industry (Upstream) Award 2010;*
- *Journalists Published Media Award 2010;*
- *Live Performance Award 2010;*
- *Market and Social Research Award 2010;*
- *Maritime Offshore Oil and Gas Award 2010;*
- *Marine Tourism and Charter Vessels Award 2010;*
- *Marine Towage Award 2010;*
- *Mobile Crane Hiring Award 2010;*
- *Nursery Award 2010;*
- *Oil Refining and Manufacturing Award 2010;*
- *Passenger Vehicle Transportation Award 2010;*
- *Pastoral Award 2010;*
- *Pharmaceutical Industry Award 2010;*
- *Pharmacy Industry Award 2010;*
- *Ports, Harbours and Enclosed Water Vessels Award 2010;*
- *Poultry Processing Award 2010;*
- *Premixed Concrete Award 2010;*
- *Quarrying Award 2010;*
- *Racing Clubs Events Award 2010;*
- *Racing Industry Ground Maintenance Award 2010;*
- *Marine Towage Award 2010;*
- *Maritime Offshore Oil and Gas Award 2010;*
- *Meat Industry Award 2010;*

- *Road Transport and Distribution Award 2010;*
- *Road Transport (Long Distance Operations) Award 2010;*
- *Seafood Processing Award 2010;*
- *Security Services Industry Award 2010;*
- *Silviculture Award 2010;*
- *Stevedoring Industry Award 2010;*
- *Storage Services and Wholesale Award 2010;*
- *Sugar Industry Award 2010;*
- *Textile, Clothing, Footwear and Associated Industries Award 2010*
- *Transport (Cash in Transit) Award 2010;*
- *Vehicle Manufacturing, Repair, Services and Retail Award 2010*
- *Waste Management Award 2010;*
- *Wine Industry Award 2010;*
- *Wool Storage, Sampling and Testing Award 2010.*

CATEGORY 4: MODERN AWARDS WHICH REQUIRE A DIFFERENT CLAUSE

26. The remaining Stage 1, 2 and 3 modern awards which have not been assigned to one of the above categories are:

- *Aircraft Cabin Crew Award 2010;*
- *Airport Employees Award 2010;*
- *Alpine Resorts Award 2010;*
- *Coal Export Terminals Award 2010;*
- *Cotton Ginning Award 2010;*
- *Graphic Arts, Printing and Publishing Award 2010;*
- *Health Professionals and Support Services Award 2010;*
- *Joinery and Building Trades Award 2010;*
- *Manufacturing and Associated Industries and Occupations Award 2010;*
- *Port Authorities Award 2010;*

- *Professional Employees Award 2010;*
- *Rail Industry Award 2010;*
- *Registered and Licensed Clubs Award 2010;*
- *Storage Services and Wholesale Award 2010;*
- *Sporting Organisations Award 2010;*
- *Timber Industry Award 2010;*

IMPORTANT NOTE

Draft clauses for the above awards are set out below, for the consideration of the Commission and representatives of employers and employees in these industries. Modifications to the model clause appear in bold.

As the Commission and other parties will appreciate, drafting appropriate provisions for all modern awards is a huge task and Ai Group and the RCSA are still considering the effects of the draft provisions proposed. To date, time has not permitted consultation with other employer and union parties, but Ai Group and the RCSA are keen to understand any unintended effects of the proposed provisions.

Modern awards which apply to specified employers

27. Aircraft Cabin Crew Award 2010

*“This award covers any business which supplies labour to **an employer of aircraft cabin crew** on an on-hire basis in respect of on-hire employees in classifications covered by this award while engaged in the performance of work for **an employer of aircraft cabin crew**. This clause operates subject to the exclusions from coverage in this award, so as to exclude any business which on-hires employees to an excluded business.”*

28. **Airport Employees Award 2010**

*“This award covers any business which supplies labour to **an employer that operates airports** on an on-hire basis in respect of on-hire employees in classifications covered by this award while engaged in the performance of work for **an employer that operates airports**. This clause operates subject to the exclusions from coverage in this award, so as to exclude any business which on-hires employees to an excluded business.”*

29. **Alpine Resorts Award 2010**

*“This award covers any business which supplies labour to **an employer who operates an alpine resort** on an on-hire basis in respect of on-hire employees in classifications covered by this award while engaged in the performance of work for **an employer who operates an alpine resort**. This clause operates subject to the exclusions from coverage in this award, so as to exclude any business which on-hires employees to an excluded business.”*

30. **Cotton Ginning Award 2010**

*“This award covers any business which supplies labour to **an employer who operates a cotton ginnery** on an on-hire basis in respect of on-hire employees in classifications covered by this award while engaged in the performance of work for **an employer who operate a cotton ginnery**. This clause operates subject to the exclusions from coverage in this award, so as to exclude any business which on-hires employees to an excluded business.”*

31. **Coal Export Terminals Award 2010**

*“This award covers any business which supplies labour to **an employer who operates a coal export terminal** on an on-hire basis in respect of on-hire employees in classifications covered by this award while engaged in the performance of work for **an employer who operate a coal export terminal**. This clause operates subject to the exclusions from coverage in this award, so as to exclude any business which on-hires employees to an excluded business.”*

32. **Port Authorities Award 2010**

*“This award covers any business which supplies labour to **an employer who is a port authority** on an on-hire basis in respect of on-hire employees in classifications covered by this award while engaged in the performance of work for **an employer who is a port authority**. This clause operates subject to the exclusions from coverage in this award, so as to exclude any business which on-hires employees to an excluded business.”*

33. **Rail Industry Award 2010**

*“This award covers any business which supplies labour to **an employer who is a Rail Transport Operator** on an on-hire basis in respect of on-hire employees in classifications covered by this award while engaged in the performance of work for **an employer who is a Rail Transport Operator**. This clause operates subject to the exclusions from coverage in this award, so as to exclude any business which on-hires employees to an excluded business.”*

34. **Registered and Licenced Clubs Award 2010**

*“This award covers any business which supplies labour to **a club covered by the award** on an on-hire basis in respect of on-hire employees in classifications covered by this award while engaged in the performance of work for **the club**. This clause operates subject to the exclusions from coverage in this award, so as to exclude any business which on-hires employees to an excluded business.”*

35. **Sporting Organisations Award 2010**

*“This award covers any business which supplies labour to a **national, State or Territory sporting organisation** on an on-hire basis in respect of on-hire employees in classifications covered by this award while engaged in the performance of work for a **national, State or Territory sporting organisation**. This clause operates subject to the exclusions from coverage in this award, so as to exclude any business which on-hires employees to an excluded business.”*

36. **Timber Industry Award 2010**

*“This award covers any business which supplies labour to **an employer in the industry sectors described in clause 4.2** on an on-hire basis in respect of on-hire employees in classifications covered by this award while engaged in the performance of work for **an employer in the industry sectors described in clause 4.2**. This clause operates subject to the exclusions from coverage in this award, so as to exclude any business which on-hires employees to an excluded business.”*

Modern awards which apply to both industries and occupations

37. **Graphic Arts, Printing and Publishing Award 2010**

*“This award covers any business which supplies labour to a business in **the graphic arts, printing and publishing industries** on an on-hire basis in respect of on-hire employees in classifications covered by this award while engaged in the performance of work for a business in the **graphic arts, printing and publishing industries**. **This award also covers on-hire employees in occupations covered by this award**. This clause operates subject to the exclusions from coverage in this award, so as to exclude any business which on-hires employees to an excluded business.”*

38. **Health Professionals and Support Services Award 2010**

*“This award covers any business which supplies labour to a business in the **health industry** on an on-hire basis in respect of on-hire employees in classifications covered by this award while engaged in the performance of work for a business in the **health industry**. **This award also covers on-hire employees in occupations covered by this award**. This clause operates subject to the exclusions from coverage in this award, so as to exclude any business which on-hires employees to an excluded business.”*

39. **Joinery and Building Trades Award 2010**

*“This award covers any business which supplies labour to a business in the **joinery and building trades industries** on an on-hire basis in respect of on-hire employees in classifications covered by this award while engaged in the performance of work for a business in the **joinery and building trades industries**. **This award also covers on-hire employees in occupations covered by this award**. This clause operates subject to the exclusions from*

coverage in this award, so as to exclude any business which on-hires employees to an excluded business.”

40. **Manufacturing and Associated Industries and Occupations Award 2010**

*“This award covers any business which supplies labour to a business in **the manufacturing and associated industries** on an on-hire basis in respect of on-hire employees in classifications covered by this award while engaged in the performance of work for a business in the **manufacturing and associated industries. This award also covers on-hire employees in occupations covered by this award.** This clause operates subject to the exclusions from coverage in this award, so as to exclude any business which on-hires employees to an excluded business.”*

41. **Professional Employees Award 2010**

*“This award covers any business which supplies labour to **an employer who is principally engaged in the information technology industry, the quality auditing industry or the telecommunications services industry** on an on-hire basis in respect of on-hire employees in classifications covered by this award while engaged in the performance of work for **an employer who is principally engaged in the information technology industry, the quality auditing industry or the telecommunications services industry.** This award also covers on-hire employees in occupations covered by this **award.** This clause operates subject to the exclusions from coverage in this award, so as to exclude any business which on-hires employees to an excluded business.”*

PROPOSED APPROACH

42. Ai Group and the RCSA submit that it would be very onerous for separate applications to be made to vary each modern award to clarify their coverage of on-hire employees and that a simpler approach would be to vary modern awards in conjunction with the Commission's Stage 4 decision.
43. A great deal of disruption and uncertainty will undoubtedly occur if modern awards come into operation on 1 January 2010 and they do not apply to employees who are employed by on-hire businesses. Furthermore, employers of on-hire employees need to know and understand where and how modern awards will apply to their employees well before 1 January to adapt commercial terms with clients, vary employment conditions with employees and prepare suitable employment systems and arrangements within operations.
44. Ai Group and RCSA request that the Commission address these matters as soon as reasonably practicable to assist compliance within the industry. We would be pleased to provide any further clarification which the Commission may require at the upcoming Public Consultations.