

**AWARD MODERNISATION SUBMISSIONS AND  
DRAFT AWARD PROVISIONS**

**Stage 4**

**AM2008/74 – Miscellaneous Award**

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



**16 October 2009**

## **AWARD MODERNISATION – STAGE 4**

### **AM2008/74 – MISCELLANEOUS AWARD**

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. This submission supplements the:
  - The 16 October 2009 submission of Ai Group regarding the Miscellaneous Modern Award;
  - The 16 October 2009 joint submission of Ai Group, the Institute of Chartered Accountants Australia, CPA Australia and the National Institute of Accountants.
5. It is essential that professional and managerial employees in the recruitment, contracting, on-hire, employment services and workforce management consulting industries retain their current award-free employment arrangements.
6. The following professionals and managerial employees are typically employed in the recruitment and consulting services industry:
  - On-Hire Recruitment Consultants
  - Recruitment Placement Consultants

- Branch Managers
- Operations Managers
- Regional Managers
- Financial Controllers
- Accountants (in-house)
- Account Managers
- Business Development Officers or Managers
- Candidate Resourcers
- Human Resource Coordinators
- Human Resources Managers
- Human Resources Consultants
- Workplace Relations Managers
- Workplace Relations Consultants
- Industrial Relations Managers
- Industrial Relations Consultants
- Employee Relations Managers
- Employee Relations Consultants
- OHS Managers
- OHS Coordinators
- OHS Consultants
- Outsourcing Consultants
- Environment Managers
- Environmental Services Consultants
- EEO Managers
- EEO Consultants
- Apprenticeship Consultants
- Training Managers
- Training Coordinators

7. To impose a modern award, including the Miscellaneous Modern Award, upon recruitment, contracting, on-hire, employment services and workforce management consulting businesses, other than where historically covered by occupational modern awards, would be contrary to the Award Modernisation Request and the *Fair Work Act*.
8. Almost all professionals and managers in the industry are paid an annual salary which is inclusive of remuneration for the quantity of time worked and the times when work is performed.
9. In addition to base salaries, many professionals and managers in the industry earn bonuses and other non-monetary benefits provided by their employer.
10. The prescriptive nature of the conditions in the *Exposure Draft - Miscellaneous Award 2010* would disadvantage professional and managerial employees in the recruitment, contracting, on-hire, employment services and workforce management consulting industries, and their employers. The conditions do not reflect the modern and flexible manner in which staff are currently engaged.
11. The Award Modernisation Request provides that the Miscellaneous Modern Award must only “*cover employees who are not covered by another modern award and who perform work of a similar nature to that which has historically been regulated by awards (including state awards).*”
12. Further, the Request provides that the Award must not cover “*those classes of employees, such as managerial employees, who, because of the nature of seniority of their role, have not traditionally been covered by awards.*”
13. Ai Group and the RCSA submit that professional and managerial employees in the abovementioned industries are:

- Not currently award-covered;
  - Do not perform work which has historically been covered by an award; and
  - Because of the nature and seniority of their role have not traditionally been covered by an award.
14. The draft Miscellaneous Modern Award’s exclusions from coverage do not clearly exempt professional and managerial employees in the recruitment, contracting, on-hire, employment services and workforce management consulting industries from coverage. The exclusions are vague and open to interpretation.
15. Ai Group and the RCSA submit that coverage of professional and managerial employees in the abovementioned industries under the *Miscellaneous Award 2010* would not promote “flexible modern work practices and the efficient and productive performance of work”, and would have a negative impact upon “productivity, employment costs and the regulatory burden”. Such outcomes are inconsistent with subsections 134(d) and (f) of the *Fair Work Act*.

## **Proposed Amendments to the Coverage of the Miscellaneous Modern Award**

16. Ai Group and the RCSA propose the following amendments to Clause 4 of the Miscellaneous Modern Award

### **4. Coverage**

**4.1** *Subject to clauses 4.2, 4.3, 4.4 and 4.5, this award covers employers throughout Australia and their employees in the classifications listed in clause 14—Minimum wages who are not covered by any other modern award.*

**4.2** *This award does not cover employees:*

- (a)** *in an industry covered by a modern award who are not within a classification in that modern award;*

**(b)** *who were not covered by an award or NAPSA immediately prior to 1 January 2010;*

~~(b) in a class exempted from the operation of a modern award,~~

**(c)** *whose earnings exceed the high income threshold in the Act.*

*or employers in relation to those employees.*

- 4.3** *The award does not cover employees excluded from award coverage by the Act.*
- 4.4** *The award does not cover employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009), or employers in relation to those employees.*
- 4.5** *The award does not cover employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009), or employers in relation to those employees.*

## **Conclusion**

- 17. The draft *Miscellaneous Award 2010* is inconsistent with the *Fair Work Act* and the Award Modernisation Request.
- 18. It is essential that professional and managerial employees in the recruitment, contracting, on-hire, employment services and workforce management consulting industries remain award-free.