Submission

Workplace Relations Section

Award Review Taskforce Discussion Papers

To: Award Review Taskforce Secretariat

A submission from the Workplace Relations Section of the Law Institute of Victoria (Submission: WPR6)

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1 Introduction

As part of the Federal Government’s workplace relations reforms, an Award Review Taskforce (“the Taskforce”) has been established which will conduct a public consultation on the best way to simplify over 4000 State and Federal awards.

The Law Institute of Victoria (LIV) is pleased to be able to provide this submission in relation to the two Award Review Taskforce Discussion papers – Award Rationalisation and Rationalisation of Award Wage and Classification Structures.

2 Award Rationalisation

The LIV makes the following comments in relation to the questions set out in the Award Rationalisation Discussion Paper.

3 Executive Summary

The LIV supports a process of award rationalisation that achieves simple, easy to understand and accessible awards which clearly set out the rights and obligations of both employers and employees. The current award system is complex and difficult to navigate for employers and employees. A key aim of the Taskforce should be to ensure that all parties are able to easily identify which award applies in their workplace.

The LIV considers that the award rationalisation process should be carried out using an industry-based approach. The LIV recommends the use of the industry sectors in the ANZSIC Divisions as the basis of the rationalised award system including the subdivisions.

The rationalised awards should be applied by common rule. This will ensure that there is a clear and comprehensive system which applies equally to all employers and employees in an industry sector and will prevent the difficulties which arise when employers are respondent to more than one award.

Q1 Can the legislative requirements best be given effect by an industry-based approach to award rationalisation? If not, why not, and what alternative arrangements better reflect the role of awards under WorkChoices?

The LIV supports an industry– based approach to award rationalisation as it would best achieve the aims set out above. An industry-based approach is more likely to prevent overlapping and multiplicity of awards in workplaces, and would be easily accessible for both employers and employees.

Q2 Should the ANZSIC Divisions be used as a basis for a system of rationalised awards or are there better alternatives?

The LIV supports the use of the industry sectors in the ANZSIC Divisions as the basis of the rationalised award system. However, the LIV view is that the 17 primary
ANZSIC codes may not provide a sufficient level of specificity for the Taskforce’s purpose and that rationalisation to the level of the ANZSIC subdivisions may be necessary.

Q3 Can an industry based system of awards be achieved through a single rationalisation process or is a multi stage approach more appropriate?

The LIV considers that a single rationalisation process is the better approach. A multi stage process could lead to significant delays in completing award rationalisation, particularly if each stage were to take up to three years. It is better to provide certainty in a timely manner so that employers and employees can accommodate the changes to their workplace rights and obligations with as little disruption as possible.

Q4 How should occupational based awards and single enterprise awards be dealt with in the rationalisation process?

Single enterprise awards should be able to be “slotted in” to appropriate the ANZSIC Divisions. Occupational awards may be more difficult, although the provisions of these awards should be able to be taken account of in any relevant industry-based Award.

Q5 Should consideration be given to the subsequent rationalisation of awards beyond the industry sector level?

The LIV does not support this move at present. This award rationalisation process will be lengthy and complex. It is more important at this time to focus attention on ensuring that what emerges from the process be a fair and comprehensive award system which provides certainty for employers and employees. Consideration can be given to further rationalisation, once the initial process has been completed and has been in effect for a reasonable period.

Q6 Should rationalised awards apply by common rule?

The LIV supports the application of the rationalised awards by common rule. This ensures there is a clear and comprehensive system which applies equally to all employers and employees in an industry sector and eliminate the difficulties which arise when employers are respondent to more than one award.

Q7 If rationalised awards do not apply by common rule, how should coverage be determined and updated?

NA

Q8 Should award free employers and employees, including new employers and their employees be covered by rationalised awards?

See Q6, above. As previously stated, the LIV supports a simplified system of award coverage. A key feature of this would necessarily be that it would have universal coverage for all employees and employers.
Q9 Should some classes of employees (for example managerial or professional employees) be exempted from common rule coverage of rationalised awards?

The LIV supports the principle of universal coverage for the rationalised award system. One way to ensure that managerial or professional employees could be included in the rationalised award system would be to have set off clauses that would, for example, ensure that salaries over a certain remuneration level would not attract additional penalty payments. This would enable these employees to receive the benefits of minimum safety net award coverage without causing unintentional financial outcomes.

Q10 How should coverage be determined for former state award employees?

NA. Victoria is already under the Federal System and has no State award employees.

Q11 What factors should be taken into account when rationalising award terms?

The Taskforce should seek to implement an award system that provides certainty, clarity and accessibility. It is vital that the scope of awards is clearly defined so that employers and employees are in no doubt as to which award applies in their workplace.

The rationalisation process will involve the consideration of provisions from many different awards which will ultimately need to be rationalised into a single industry standard. The LIV supports a process which would select:

1. First, the AIRC Test Case standard on a given issue if it commonly used, and then if there is no such provision,
2. the most commonly appearing clause if this is clear; and if not,
3. the average of the existing provisions.

The LIV notes that the Government has stated that the award rationalisation process is not a “benefit cutting exercise” (at paragraph 1.5 of the Award Rationalisation Discussion Paper). Therefore, in order to prevent the diminution of benefits for existing employees with benefits greater than the rationalised award terms, there should be a proviso that the rationalised term will only apply to new employees or employees who had previously received lesser benefits than the rationalised term.

Q12 Should model rationalised awards be developed as part of the award rationalisation process to operate by default unless stakeholders raise specific criticisms?

The LIV considers that this could be of some benefit.

Q13 Should there be transitional arrangements to allow employers and employees to move onto rationalised awards gradually?

In the interests of certainty and clarity, the LIV considers that a transitional arrangement is best avoided. The recent experience in Victoria with the
implementation of common rule awards illustrated that workplaces are capable of making such changes in a timely fashion without significant concern.

**Q 14 How can the Taskforce best prevent discrimination in making recommendations about award rationalisation?**

The LIV recommends that when a request is made under section 118 of the Work Choices Act (the Act), the Minister requests that in accordance with the requirements of sections 44B and 44C of the Act, the AIRC ensure there are no discriminatory provisions in the rationalised awards.

**Q15 Should award rationalisation take place prior to or at the same time as stage 2 award simplification?**

Stage 2 rationalisation is a relatively simple undertaking in that its aim is to remove non allowable award matters from awards. It should be possible to undertake both stages of rationalisation and simplification at the same time.

**Q16 Should a small number of awards be simplified prior to the AIRC undertaking award rationalisation? If so, which awards?**

Given the rationalisation process may take up to 3 years, it would be appropriate to give some early guidance and simplify the most commonly used awards prior to rationalisation.

**Q17 Should the Taskforce prioritise industry sectors for award rationalisation?**

Yes, the industries with the highest award reliance should be prioritised by the Taskforce.

**Q18 How should the transition to 38 ordinary hours in awards with more than 38 ordinary hours be undertaken?**

The LIV makes no comment in relation to this question.

**Q19 How should rationalised awards be published?**

Rationalised awards should be available online on the websites of the AIRC and/or Wagenet. These should be authorised versions which may be relied upon in any State or Federal court or tribunal.

4 **Rationalisation of Award Wage and Classification Structures**

The LIV makes the following comments in relation to the questions set out in the Rationalisation of Award Wage and Classification Structures Discussion Paper.
The LIV supports a structure in which the classification levels are based on an assessment of skill-levels using a national universal objective and transparent system such as a competency based system.

The wage and classification structures introduced in rationalised awards should provide employers and employees with certainty and clarity. It should be easy to use and to assess where each employee fits into the classifications.

The LIV considers that any broadbanding arrangement should focus on the identification of skill level and career progression. Further, a processes should be established which guarantees that employees will not be disadvantaged under the new arrangements.

Q1 Does the minimum rates adjustment process provide a useful model for assessing skill-level structures for wage classifications?

In the past, minimum rate adjustments have squeezed wage relativities in awards. However, under the Workplace Relations Act 1996 as in force prior to the reforms, the purpose of adjusting minimum rates was to maintain the safety net of wages and allowances.

The LIV considers that the assessment of skill-level structures should be carried out as a separate procedure based on an analysis of skills using a national universal objective and transparent system. A competency based system is such a system. The system should include input from its users and stakeholders, such as employer and employee organisations.

Q2 What is the best means of broadbanding classification structures?

In industries where broadbanding has not yet occurred, the process should be based on a system that will serve employers and employees across the industry and between industries. The system should give users certainty, be user-friendly, it should be national, universal, objective and transparent.

The LIV considers that any broadbanding arrangement must properly focus on the identification of skill level and career progression.

If the Taskforce is to comply with the Government statements that; award wages will not be reduced; that the rationalisation process is not a benefit cutting process, and Wage rates cannot fall below the levels set by the 2005 Safety Net Review rate, processes must be established which guarantee that employees will not be disadvantaged.

Q3 How will these broadbands best assist the Fair Pay Commission in its wage-setting function?

The broadband will assist the Fair Pay Commission in comparing and analysing classification standards within and across industries. The benefit of this work will
allow the Commission to better understand possible wage and skill discrepancies, skill shortages, training needs and pay equity matters.

Q4 How can classifications and wage rates be broadbanded in accordance with the requirement to remove state-based differences within three years of reform commencement?

Classifications and wage rates can be broadbanded based on national competency standards that are transportable across and between industries through all states and are clear, easy to understand and relevant to the business of the employer and to the work carried out by the employee.

Q5 Are there any specific issues in a broadbanding approach that relate to APCSs for juniors, trainees/apprentices and workers with disabilities?

Most wage rates for juniors, trainees, apprentices and workers with disabilities are based on a percentage of one of the adult classifications levels under the relevant award. Under a broadbanding classification system which will have fewer pay levels but greater ranges within each level, it will be necessary to determine which level will be used to calculate wages for juniors, trainees, apprentices and workers with disabilities. It is important that protections are built into the system to ensure that actual wage levels do not fall for these categories of employees.

Q6 Are there any specific issues in the broadbarding of casual rates?

The LIV makes no comment on Q6.

Q7 To what extent should the Taskforce consider substantial realignment of amalgamation of classifications derived from federal and State awards?

The Fair Pay Commission may consider realigning classifications derived from Federal and State awards as a task that is supported by the parties to the relevant award. The task could be separated from the realignment of wage rates that could occur once the classification task is complete.

Q8 Should APCSs be rationalised on an industry basis?

Yes.

If so:

-Should the ANZSIC divisions be used as a basis for a system of rationalized APCSs or are there better alternatives?

The ANZSIC may be used as a basis for a system of rationalized APCS as long as there is flexibility to use subdivisions and the descriptors.

-Can an industry based system of APCSs be achieved through a single process or is a multi-stage approach more appropriate?
Q9 Are there alternatives to an industry based approach that the Taskforce should consider? What are the potential advantages and disadvantages of these alternatives?

The LIV does not support any of the alternatives to an industry based approach.

Q10 Should rationalisation occur beyond an industry basis, possibly to one single APCS structure?

The LIV does not support the move to a single APCS structure. See also response to Q5 in the Award Rationalisation Discussion Paper.

Q 11 Are there any specific issues in simplifying APCSs that relate to juniors, trainees/apprentices and workers with disabilities?

See Q5 above. The LIV also notes that similar considerations arise with respect to these categories of workers in that a system which is easy to understand and access is most desirable.

Q12 Are there any specific issues relating to the simplification of casual rates?

The LIV makes no comment on Q12.

Q13 What transitional arrangements could the Taskforce consider to deal with differences in classifications derived from federal and State awards?

The LIV makes no comment in relation to Q13.

Q14 How can the taskforce best prevent discrimination in making recommendations about wage and classification rationalisation?

Section 3 (j) of the Workplace Relations Act 1996 establishes a principal object of the Act to be to provide a framework by “respecting and valuing the diversity of the workforce by helping to prevent and eliminate discrimination...”. The Australian Industrial Relations Commission has an important ongoing role in ensuring that awards do not allow for any form of discrimination.

The Taskforce can provide advice to the Minister regarding information that he may provide to the AIRC as part of an award rationalisation request. The LIV recommends that the AIRC is explicitly required to evaluate proposed awards as part of the rationalisation process to ensure that awards are not discriminatory. Where a proposed rationalised award does contain discriminatory provisions, the AIRC should have the authority to not approve the award.

The Taskforce can best prevent discrimination in making recommendations about wage and classification rationalisations by making recommendations that will, if accepted by the Minister, lead to outcomes that are procedurally fair, transparent and inclusive.

Q15 How should pay equity issues be addressed by the Taskforce?

Pay equity issues should be addressed by the Taskforce by periodically conducting case studies into particular classification or classifications in part or parts of an
industry. The Taskforce can require that information about pay equity be provided to the Taskforce as part of the parties’ submission in regard to future increases to minimum safety net.