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**Fair Work Commission: 4 yearly review of modern awards**

**OUTLINE OF SUBMISSIONS: GROUP 4D-F  
EXPOSURE DRAFTS**

**AUSTRALIAN BUSINESS INDUSTRIAL**

**- and -**

**THE NSW BUSINESS CHAMBER LTD**

**18 JANUARY 2018**

**1. BACKGROUND**

1.1 These submissions relate to the Exposure Drafts of Group 4D-F Awards released in October and November 2016.

1.2 In Amended Directions issued on 21 December 2016, the Fair Work Commission (**Commission**) directed interested parties to file submissions on the technical and drafting issues related to the Group 4D-F Exposure Drafts by 18 January 2017, other than those Awards being dealt with as part of the Plain language exercise.

1.3 These submissions are made on behalf of Australian Business Industrial (**ABI**) and the New South Wales Business Chamber Ltd (**NSWBC**). ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009*. NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009*.

1.4 ABI and NSWBC has a material interest in the following Group 4 D, E & F Awards:

*Sub-group 4D*

- (a) *Amusement, Events and Recreation Award 2010;*
- (b) *Broadcasting and Recorded Entertainment Award 2010;*
- (c) *Journalists Published Media Award 2010;*
- (d) *Racing Clubs Events Award 2010*

*Sub-group 4E*

- (e) *Cemetery Industry Award 2010;*
- (f) *Food, Beverage and Tobacco Manufacturing Award 2010;*
- (g) *Funeral Industry Award 2010;*
- (h) *Professional Employees Award 2010*

*Sub-group 4F*

- (i) *Dry Cleaning and Laundry Industry Award 2010;*
- (j) *Fast Food Industry Award 2010;*
- (k) *Hair and Beauty Industry Award 2010;*
- (l) *Registered and Licensed Clubs Award 2010*

1.5 ABI and NSWBC appreciate the opportunity to provide the following submissions on the Group 4 D, E and F Exposure Drafts.

## **2. PRELIMINARY COMMENTS**

- 2.1 We note that a new clause has been inserted into the Group 4 Exposure Drafts titled 'Effect of variations made by the Fair Work Commission'. In our submission, this clause is more appropriately located as a sub-clause of the 'Title and Commencement' clause rather than as a standalone clause. We refer to paragraph 2.1 of our submission dated 1 July 2016 in respect of the Group 4A-C awards.
- 2.2 We also refer to paragraphs 2.6-2.11 of our 15 April 2016 submission in respect of the Group 3 Exposure Drafts where our clients submitted that the words 'as varied' should be removed from sub-clause 1.2 of the Exposure Drafts.

## **3. AMUSEMENT, EVENTS AND RECREATION AWARD 2010**

- 3.1 We do not have any submissions to make in respect of this Award.

## **4. BROADCASTING AND RECORDED ENTERTAINMENT AWARD 2010**

- 4.1 Clause 7.2: In response to the query posed by the commission at clause 7.2, we submit that under clause 40.3, agreement can be reached on an individual basis.
- 4.2 Clause 43.1: In respect of Technical staff, parties are asked to clarify when overtime is payable consistent with Clause 42.1. While it is not immediately apparent on the face of the Award, it appears that overtime for Technical staff should be assessed with reference to clause 36 Hours of work—Technical staff.
- 4.3 Clause 51.3: In response to the query posed by the Commission, the provision caps payments under clause 51 to the amount payable for Grade 5 (or Grade 3 as the case may be).
- 4.4 Clause 66.2(c): Parties are asked to confirm the method of calculation for payment for publicity/promotion work for employees engaged by the day and by the week. Are the relevant daily and weekly rates divided by 7.6 and 38 respectively to determine an hourly rate? If so, would it be helpful to include a method for calculation? ABI and NSWBC submit the answer to both questions is yes.
- 4.5 Clause 67.1(d): Parties are asked to confirm the method of calculation for payment of overtime for employees engaged by the day and by the week. Are the relevant daily and weekly rates divided by 7.6 and 38 respectively to determine an hourly rate? If so would it be helpful to include a method for calculation? ABI and NSWBC submit the answer to both questions is yes.
- 4.6 Clause 81.2: In response to the query raised by the Commission, we consider that clause 81.2 should refer to the minimum rates in clause 13 rather than the 'gross agreed remuneration'.

## **5. JOURNALISTS PUBLISHED MEDIA AWARD 2010**

- 5.1 Clause 4.9(a)(i): The reference to the category of employees excluded should be to "employees described at clause 4.3" and not "employees described at clause 3.1".
- 5.2 At clause 7.3, there appears to be a cross-referencing error. The facilitative provisions relating to Ordinary Hours of Work should be a reference to clause 12.3, not clause 12.5.

5.3 Clause 11.8: In response to the Commission's question, we submit that both clause 11.8 and Schedule A are no longer required.

5.4 At clause 12.1, there appears to be another cross-referencing error. The reference to clause 12.5 should be to clause 12.6, such that it reads:

*"(provided that the requirements of clauses 12.6 and 12.9 are met)"*.

5.5 In response to the Commission's question at B.1.3, we submit that while it would be useful to include the penalties payable for employees (including shiftworkers), there should be a reference in the table(s) to the clause(s) from which the rate is derived, so that the reader can confirm the applicability of the rate. Our clients consider this to be important since the conditions which sometimes attach to the payment of the penalty may be difficult to capture in a tabular form.

## **6. RACING CLUBS EVENTS AWARD 2010**

6.1 Schedule A.2.4: We do not consider that it is necessary for the award to specify how the minimum payments in clauses 12.4 and 12.5 are calculated, given that the award provides the relevant amounts.

## **7. CEMETERY INDUSTRY AWARD 2010**

7.1 Clause 4.1: In response to the Commission's query, we do not consider there is any need to define "Cemetery and Crematorium industry". The ordinary meaning of this term, which the current award uses, is sufficiently clear.

7.2 Clause 10.1: The current wording of this provision in the existing Award (clause 10.3) should be retained. The definition of casual employment should not be amended given that it is the subject of consideration in the casual and part-time employment common issues proceeding (AM2014/196, AM2014/197).

7.3 In relation to the Commission's question at clause 15.2, our view is that the industry allowance applies for all purposes under this award.

## **8. FOOD, BEVERAGE AND TOBACCO MANUFACTURING AWARD 2010**

8.1 We do not have any submissions to make in respect of this Award.

## **9. FUNERAL INDUSTRY AWARD 2010**

9.1 Clause 2: In relation to the Commission's question at clause 2, the definitions are not used elsewhere in the award and should be deleted.

9.2 Clause 13.2(a): The removal of the words "any or all day days" and "inclusive" makes the clause less clear. The words should be reinserted into the new clause so that it reads: *"The ordinary hours of work may be worked on any or all days Monday to Friday inclusive between 7.00am and 7.00pm"*.

9.3 Clause 14: In relation to the Commission's question, rest periods are paid, and meal breaks are unpaid.

9.4 Clause 15.6: In relation to the Commission's question, a school-based apprentices schedule is not required in circumstances where the Award does not provide for the employment of apprentices.

- 9.5 In relation to the Commission's question regarding clause 16.3(c), as per the express wording of the clause, the uniform allowance applies only to full-time employees.
- 9.6 At clause 18.6 the word "for" should be deleted before "at 150%" for clarity and consistency with the balance of the Award.
- 9.7 Clause 18.6: In relation to the Commission's question regarding clause 18.6, we consider that the 150% loading is calculated on the basis of the minimum hourly rate. . In this regard, we would submit that the words "applicable rate" should read "applicable minimum hourly rate" for consistency with other clauses.
- 9.8 Clause 19: In relation to the Commission's question, we submit that:
- (a) In relation to clause 19.1(b), we don't see that there is any issue in the way this interacts with minimum engagement clauses in clauses 10.5 and 11.3 of the award, in the sense that it provides for loadings when an employee performs work outside their rostered start and finish times, which are subject to the minimum engagement requirement.
- (b) In relation to clause 19.4(a) and 19.4(b), our reading is that these are intended to cover the field for this type of work as they provide for minimum engagement periods in these scenarios.
- 9.9 Clause 20: In relation to the Commission's question regarding clause 20, our view is that both of these clause are intended to cover the field for this type of work, as they provide for minimum engagement periods in these scenarios.

## **10. PROFESSIONAL EMPLOYEES AWARD 2010**

- 10.1 Clause 2.2: A full stop is missing from the end of the definition of 'Professional engineering duties'.
- 10.2 Clause 13: The Award does not currently contain a limit on the number of weeks in a cycle. The reference to averaging over "the cycle" relates to the specific cycle that an individual employee works across in their particular workplace, and different workplaces will most likely have different rostering cycles. That being the case, we do not consider it necessary or appropriate to impose an arbitrary cap.

## **11. DRY CLEANING AND LAUNDRY INDUSTRY AWARD 2010**

- 11.1 Clause 24.8: In response to the Commission's question at clause 24.8, we consider that the clause can be removed as it is unlikely to serve any ongoing purpose.

## **12. FAST FOOD INDUSTRY AWARD 2010**

- 12.1 In relation to the Commission's question at clause 21.3 regarding interaction with clause 20.2(b), our clients submit that the penalty rates are payable for ordinary hours worked on these days and that the overtime at 200% under clause 20.2(b) is in substitution for and not cumulative on the Sunday penalties of 150% and 175% under this Award.
- 12.2 This is consistent with clause 24.1 of the federal pre-reform award, the *National Fast Food Retail Award 2000*, and clause 14(e) of the *Shop Employees (State) Award (NSW)* which provided that the penalties and loadings prescribed in that clause:

*“shall not be taken into consideration in calculating any payment for overtime or public holidays, or for any period of sick leave.”*

**13. HAIR AND BEAUTY INDUSTRY AWARD 2010**

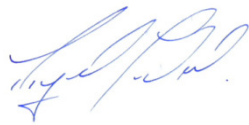
13.1 We do not have any submissions to make in respect of this Award.

**14. REGISTERED AND LICENSED CLUBS AWARD 2010**

14.1 Clause 4.2: The proposed amendment Clause 4.2 may give rise to a misunderstanding that clause 4.2 outlines the exhaustive coverage of the award. ABI and NSWBC submit that clause 4.2 should instead read: “The coverage of this Award includes...”

14.2 Clause 11: Parties are asked whether a maintenance and horticultural employee may be engaged on a casual basis; and if so, do the percentages in clause 24.1 or 24.2 apply?: ABI and NSWBC submit that a maintenance and horticultural employee may be engaged on a casual basis and that clause 24.2 would apply save for the fact that Monday to Friday and Saturday before 12 noon would be paid at 125%.

14.3 Clause 15.8(g): This clause is no longer required and can be removed.



**Nigel Ward**  
**CEO + Director**

Australian Business Lawyers & Advisors Pty Limited  
(02) 9458 7286  
nigel.ward@ablawyers.com.au



**Kyle Scott**  
**Senior Associate**

Australian Business Lawyers & Advisors Pty Limited  
(02) 9458 7607  
kyle.scott@ablawyers.com.au

**On behalf of Australian Business Industrial and the NSW Business Chamber Ltd**

**18 January 2017**