



Fair Work Commission: 4 yearly review of modern awards

SUBMISSIONS: GROUP 3 AWARDS

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

29 MARCH 2019

BACKGROUND

1. These submissions relate to the exposure drafts for Group 3 awards.
2. In a statement issued on 13 February 2019 the Commission provided an overview of the status of the award stage of the 4 yearly review of modern awards and a timeline for the finalisation of exposure drafts.
3. The Commission directed interested parties to file written submissions on the updated exposure drafts published in February 2019.
4. 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*.
5. ABI and NSWBC have a material interest in the following Group 3 awards which are dealt with in these submissions:
 - (a) Business Equipment Award 2010;
 - (b) Commercial Sales Award 2010;
 - (c) Real Estate Industry 2010;
 - (d) Educational Services (Schools) General Staff Award 2010;
 - (e) Gardening and Landscaping Services Award 2010;
 - (f) Pastoral Award 2010; and
 - (g) Sugar Industry Award 2010.
6. ABI and NSWBC also have a material interest in the following Group 3 awards:
 - (a) Banking, Finance and Insurance Award 2010;
 - (b) Clerks - Private Sector Award 2010;
 - (c) Contract Call Centres Award 2010;
 - (d) Fitness Industry Award 2010;
 - (e) Labour Market Assistance Industry Award 2010;
 - (f) Legal Services Award 2010;
 - (g) Miscellaneous Award 2010;
 - (h) Telecommunications Services Award 2010;
 - (i) Educational Services (Post-Secondary Education) Award 2010;
 - (j) Horticulture Award 2010;
 - (k) Nursery Award 2010; and
 - (l) Wine Industry Award 2010.

7. Our clients have reviewed the revised exposure drafts for these awards but have no submissions to make at this point in time.
8. ABI and NSWBC appreciate the opportunity to provide the following submissions on the Group 3 award exposure drafts.

BUSINESS EQUIPMENT AWARD 2010

Clause 7.8

9. It appears that a full stop should be inserted at the end of clause 7.8.

COMMERCIAL SALES AWARD 2010

Clause 3.1

10. The definition of “*Commercial Traveller*” has been moved from the definition schedule to the coverage clause in accordance with [2017] FWCFB 3433 at [339].
11. In this decision, the Full Bench determined that *industry* definitions were to be placed in the coverage clause with an appropriate cross reference placed in the definition schedule.
12. The Commercial Sales Award is an occupational award and so does not require an industry definition. The definition of “*Commercial Traveller*” is instead a definition of one of the three occupations covered by the award.
13. Our clients do not object to “*Commercial Traveller*” being defined in clause 3.1 but feel that definitions for “*Merchandiser*” and “*Advertising Sales Representative*” should also be included for completeness.

Clause 9.2

14. Clause 9.2 of the exposure draft reads as follows:

“The following adult employees are not entitled to the minimum wages set out in the table in clause 9.1:

- (a) an employee receiving a supported wage (refer to Schedule C—Supported Wage System); and*
- (b) a trainee*
 - (i) Schedule E to the Miscellaneous Award 2010 sets out minimum wage rates and conditions for employees undertaking traineeships.*
 - (ii) This award incorporates the terms of Schedule E to the Miscellaneous Award 2010 as at 1 July 2017. Provided that any reference to “this award” in Schedule E to the Miscellaneous Award 2010 is to be read as referring to the Commercial Sales Award 2010 and not the Miscellaneous Award 2010.”*

15. The reference to *“the following adult employees”* could be interpreted as limiting the operation of the clause (and thus the incorporation of the training wage) to adult employees.
16. Our clients suggest that the word *“adult”* be removed from clause 9.2.
17. Clause 9.1 expressly states that the minimum wages set out in the table are for adult employees and so the word *“adult”* is not required in clause 9.2.

Schedule A

18. Clause 16.3 previously prescribed public holiday rates for work done by employees *“in soliciting orders”*. The clause was amended by [2018] FWCFB 1405 at [239] and now prescribes public holiday rates for work done by employees *“other than travelling”*.
19. The summary tables in clauses A.1.1, A.1.2, A.2.1, A.3.1, A.3.2 and A.3.3 still divide public holiday rates into *“soliciting orders”* and *“travelling for work”*. The heading *“soliciting orders”* should be updated to *“Other than travelling”*.

REAL ESTATE INDUSTRY 2010

Clause 10.4(a)

20. The cross references to *“clauses 10.1 or 10.3”* should instead refer to *“clauses 10.2 or 10.3”*.

EDUCATIONAL SERVICES (SCHOOLS) GENERAL STAFF AWARD 2010

Clause B.1.2

21. Parties have been asked to check the recently introduced rates that were added to the exposure draft in accordance with [2018] FWCFB 63688.
22. It appears that the rates have been calculated correctly.

GARDENING AND LANDSCAPING SERVICES AWARD 2010

Schedule K

23. Parties are asked to confirm that the definition of public holiday should be deleted from the definition schedule.
24. Our clients do not oppose this course.

PASTORAL AWARD 2010

Clause 6.7(b)

25. Clause 6.7(b) makes reference to 6.7(b) when it should make reference to clause 6.7(a).

Clause 10.2

26. The Full Bench expressed the provisional view that if an employee is entitled to the allowance in clause 10.2(b)(iii) they will not also be entitled to the allowance in clause 44.1. See [2017] FWCFB 3433 at [153]-[154]. The Full Bench seek further submissions on its provisional view.
27. Our clients agree with the Full Bench's provisional view.

SUGAR INDUSTRY AWARD 2010

Clause 26

28. Parties are asked to confirm that the facilitative provision in clause 26.10(d) requires agreement between an employer and the majority of employees.
29. ABI and NSWBC submit it does so.

Schedule E

30. The description in the table in Schedule E in relation to clause 16.1(v)(iii) has been redrafted by the Modern Awards Team. Parties are asked to comment.
31. Our clients do not oppose the proposed description.



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