

From: [Kyle Scott](#)
To: [AMOD](#)
Cc: [Sophie Margaret Whish](#)
Subject: Reply submissions on Group 4A-C Exposure Drafts
Date: Friday, 22 July 2016 4:29:49 PM
Attachments: [doc00892920160722173249.pdf](#)

Dear Sir/Madam

Please find attached for filing reply submissions of Group 4A-C exposure drafts.

Yours sincerely

Kyle Scott

Senior Associate
Australian Business Lawyers & Advisors

140 Arthur Street North Sydney NSW 2060
Dir: +612 9458 7607 | Fax: +612 9954 5029 | Mob: 0422 286 133
Tel: +612 9458 7005 | Web: www.ablawyers.com.au



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Fair Work Commission: 4 yearly review of modern awards

**REPLY SUBMISSIONS: GROUP 4A-C EXPOSURE
DRAFTS**

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

22 JULY 2016

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1. BACKGROUND

- 1.1 These reply submissions relate to the Exposure Drafts of group 4A-C awards released in May 2016.
- 1.2 These reply 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*.
- 1.3 In the Statement of 15 July 2016¹, the Commission indicated that the construction group of awards would be the subject of separate timetabling, and that the directions in respect of the Plumbing and Fire Sprinklers Award would be further amended to require the filing of submissions in reply by 3 August 2016.
- 1.4 Accordingly, these reply submissions relate to the following awards in which ABI and NSWBC has a material interest:
- (a) Aboriginal Community Controlled Health Services Award 2010;
 - (b) Aged Care Award 2010;
 - (c) Children’s Services Award 2010;
 - (d) Educational Services (Teachers) Award 2010;
 - (e) Social, Community, Home Care and Disability Services Industry Award 2010;
 - (f) Supported Employment Services Award 2010; and
 - (g) Electrical, Electronic and Communications Contracting Award 2010.
- 1.5 ABI and NSWBC appreciate the opportunity to provide the following reply submissions.

2. ABORIGINAL COMMUNITY CONTROLLED HEALTH SERVICES AWARD 2010

- 2.1 Clause 17.3(b)(i): In response to paragraph 13 of United Voice’s submissions, we do not agree that the removal of the words “not less than” from this clause alters the entitlement. It is clearly understood and trite that the modern award is intended to provide a minimum set of obligations. As such, the removed words are superfluous and their deletion should be maintained as a matter of plain English drafting.

3. AGED CARE AWARD 2010

- 3.1 Clause 11.1: In response to paragraph 6 of the AWU’s submissions, we do not agree that the words “engaged on an hourly basis” should be removed. We do not agree that there is any inconsistency between this wording and the minimum engagement clause; the two clauses must simply be read together.
- 3.2 Clause 18.3(d)(i): In response to paragraph 20 of the HSU’s submissions, we do not agree that the removal of the words “not less than” from this clause alters the entitlement. It is clearly understood and trite that the modern award is intended to provide a minimum

¹ [2016] FWC 4781

set of obligations. As such, the removed words are superfluous and their deletion should be maintained as a matter of plain English drafting.

4. CHILDREN'S SERVICES AWARD 2010

- 4.1 Clause 4.1: Our clients oppose the submission of United Voice regarding inserting a reference to the *Clerks - Private Sector Award 2010* into clause 4.1. Clause 4.1 relevantly provides "*The award does not cover **employers** whose primary functions are covered by the following awards...*" [emphasis added]. The proposed amendment will not have the intended effect, as the primary functions of child care centres are not covered by the *Clerks - Private Sector Award*, which is an occupational award.

5. SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010

- 5.1 Clause 3.3: In response to the submission of the HSU, we note that the wording is consistent with the Commission's decision of 23 December 2014 in [2014] FWCFB 9412.

- 5.2 Clauses 10.3, 13 and 19.1(b): Our clients oppose the submission of the AWU. Based on our understanding of the AWU submission, the amendment sought represents a substantive change to existing entitlements in the Award.

Clause 11.1: Our clients oppose the AWU submission. We do not consider any additional words to be necessary.

- 5.3 Clause 11.3: The ASU's submission in respect of this clause is not a technical drafting matter but rather represents a proposed substantive change to existing entitlements in the Award.

- 5.4 Clause 14.3: Our clients oppose the submission of the AWU.

- 5.5 Clause 14.3(e): Our clients oppose the submission of the AWU. Clause 14.3(e) accurately reflects the existing provision at clause 25.5(c) of the Award.

- 5.6 Clause 14.6: Our clients oppose the submission of United Voice in relation to the proposal to insert additional words into the clause.

6. SUPPORTED EMPLOYMENT SERVICES AWARD 2010

- 6.1 Clause 3.3: In response to the submission of the HSU, we note that the wording is consistent with the Commission's decision of 23 December 2014 in [2014] FWCFB 9412.

- 6.2 Clause 11.1: Our clients oppose the submission of the AWU, which seeks to introduce a new definition of 'casual employee'. We do not consider that there is any issue with the current definition and do not consider it to be inconsistent with the minimum engagement in clause 11.6.

- 6.3 Clause 16.2: NDS has submitted that certain wage assessment tools should be removed from the Award as they are no longer in use. Our clients are not opposed to the removal of redundant wage assessment tools which are no longer used.

7. ELECTRICAL, ELECTRONIC AND COMMUNICATIONS CONTRACTING AWARD 2010

- 7.1 Clause 13.6: Our clients oppose the CEPU submission, particularly the suggestion that the clause should be deleted. The clause should remain in the Award because it allows

employers to withhold pay from employees who start work early or finish work late. Essentially, this means that employees will be paid for the hours they work. This is consistent with section 326 of the Fair Work Act 2009. If there is any ambiguity concerning the application of this clause, we submit that the clause should be amended to confirm that employees will only be paid for the time they are directed to work and actually work. In this regard, ABI and the NSWBC agree with the submissions of National Electrical & Communications Association and Fire Protection Association of Australia in respect of this clause.

- 7.2 Clause 7: ABI and the NSWBC disagree with the submission of Master Electricians Australia (MEA) that there may be a correlation between the operation of facilitative provisions under clause 7 of the Exposure Draft and the flexibility provisions for individuals under clause 6 of the Exposure Draft. The facilitative provisions are award provisions that can be departed from by agreement between the employer and the majority of employees or an individual employee. There is no requirement that employees must be better off overall as a result of the award provision being applied (by agreement) in a manner which is different to the standard approach. Furthermore, such agreement does not have to be recorded in an individual flexibility agreement. Clauses 6 and 7 operate independently of one another.
- 7.3 Clause 21: ABI and the NSWBC oppose the submission of MEA in respect of this clause. The term 'all-purpose rate' has been replaced with the term 'ordinary hourly rate' which encompasses not only an employee's minimum hourly rate under clause 16.2 of the exposure draft, but also:
- (a) the industry allowance; and
 - (b) if applicable, additional all-purpose allowances as these allowances form part of the person's ordinary hourly rate.
- 7.4 Accordingly, we submit clause 21 should not be changed because when it is read in conjunction with the definition of 'ordinary hourly rate' in clause 2.2, it is clear that an employee must be paid what is their all-purpose rate (if applicable).



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

22 July 2016