

From: Kyle Scott [mailto:Kyle.Scott@ablawyers.com.au]
Sent: Friday, 20 April 2018 3:53 PM
To: AMOD
Cc: Sophie Margaret Whish; Nigel Ward
Subject: Submission on Group 4 Awards

Dear Sir/Madam,

Please find **attached** submissions on behalf of Australian Business Industrial and the NSW Business Chamber Ltd in relation to numerous Group 4 Awards.

These submissions are made in accordance with the Decision of the Full Bench of 21 March 2018 in relation to the technical and drafting matters in Group 4 Awards.

Yours sincerely

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Fair Work Commission: 4 yearly review of modern awards

SUBMISSION: GROUP 4 AWARDS

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

20 APRIL 2018

BACKGROUND

1. On 21 March 2018, the Fair Work Commission (the **Commission**) published a decision relating to a number of Group 4 awards as part of the 4 yearly review of modern awards (the **March Decision**).¹
2. Arising from the March Decision, interested parties were given an opportunity to make submissions on a range of award-specific issues. In this submission, we address certain issues that were raised in the March Decision in respect of the following awards:
 - (a) Amusement, Events and Recreation Award;
 - (b) Broadcasting and Recorded Entertainment Award;
 - (c) Children’s Services Award;
 - (d) Educational Services (Teachers) Award;
 - (e) Electrical, Electronic and Communications Contracting Industry Award;
 - (f) Funeral Industry Award;
 - (g) Journalist Published Media Award;
 - (h) Plumbing and Fire Sprinklers Award;
 - (i) Professional Employees Award;
 - (j) Social, Community, Homecare and Disability Services Industry Award; and
 - (k) Supported Employment Services Award.
3. This submission is 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*.
4. In respect of the Children’s Services Award, this submission is also made on behalf of the Australian Childcare Alliance.
5. Our clients appreciate the opportunity to provide this submission.

¹ [2018] FWCFB 1548.

AMUSEMENT, EVENTS AND RECREATION AWARD

6. In relation to Item 18, our clients do not object to the Commission's provisional view expressed at [197] that the words 'All time worked' be replaced with 'Ordinary hours' in clause 19.5(a) of the exposure draft.

BROADCASTING AND RECORDED ENTERTAINMENT AWARD

7. In response to the submissions sought by the Commission in relation to its decision at [242] regarding the calculation of overtime by reference to the ordinary hourly rate as opposed to the minimum hourly rate, we have not identified any additional variations required to the exposure draft to give effect to this interpretation.

CHILDREN'S SERVICES AWARD

8. We respectfully confirm that our clients in this matter (being the Australian Childcare Alliance, Australian Business Industrial and the NSW Business Chamber) wish to press substantive matters labelled S25 and S26 in the table of outstanding substantive matters.

EDUCATIONAL SERVICES (TEACHERS) AWARD

9. While a number of substantive matters across a number of educational services awards have been referred to a separate Full Bench in AM2015/6, we respectfully draw the Full Bench's attention to the fact that there does not appear to be any mention of the outstanding substantive matters specifically related to the Educational Services (Teachers) Award (AM2014/266).
10. We confirm our clients (the Australian Childcare Alliance, Australian Business Industrial and the NSW Business Chamber) wish to press two substantive matters outlined in our correspondence of 23 February 2017.

ELECTRICAL, ELECTRONIC AND COMMUNICATIONS CONTRACTING INDUSTRY AWARD

11. The Commission has expressed a provisional view that the variation sought by the Fire Protection Association of Australia (FPAA) to insert a new shiftwork clause should be re-classified as a substantive matter to be determined by a separate Full Bench². ABI and NSWBC:
- (a) repeat and rely on its letter to the Commission dated 10 February 2017; and

² [2018] FWCFB 1548 at [391] to [392]

- (b) agrees with the position of Ai Group in respect of this issue and in particular the matters referred to in Ai Group's letter to the Commission dated 9 February 2017.
12. ABI and NSWBC maintain that the new shiftwork clause proposed by the FPAA will result in a significant change to the Electrical Award, namely removing the distinction between continuous and non-continuous shiftworkers and the relevant entitlements under the Electrical Award for each distinct category of shiftworker. Accordingly, ABI and NSWBC agree with the provisional view of the Commission expressed in its decision dated 21 March 2018.

FUNERAL INDUSTRY AWARD

13. These reply submissions are made in response to the Fair Work Commission's provisional view expressed in relation to various items being considered in relation to the minimum engagements of casual employees in the Funeral Industry Award 2010.
14. ABI and NSWBC submit that the Commission's provisional view in relation to the minimum engagements for casuals in the industry has been made on the basis of guaranteeing a minimum number of hours of work to a class of employee not traditionally entitled to such a guarantee.
15. Clauses 20.1(a) and 19 in the Exposure Draft will have no work to do in relation to casual employees despite not being presently worded to expressly exclude that class of employee.
16. We understand that it is the Commission's intention to amend clause 20.1(d) of the Award to clarify the Commission's provisional view of the way in which a casual's minimum engagement by the insertion of the following wording:
- "d) Work performed by part-time and casual employees, as prescribed in clauses 20.1(a)–(c), is subject to the applicable minimum engagement periods prescribed at clauses 10.5 and 11.3."*³
17. ABI and NSWBC oppose the provisional view adopted by the Fair Work Commission in relation to this matter and the insertion of the wording proposed by the AWU. We have previously submitted that this change, which was being sought by the AWU, should have

³ Paragraph 490 of the Group 4 Decision [2018] FWCFB 1548.

been the subject of a hearing and supporting evidence by the AWU⁴ and this process will have been effectively passed over by the insertion of the wording they were seeking, as set out above.

18. The impact of the provisional view is that casuals will be paid effectively double what a full or part-time employee would receive for performing removal work after hours even though the work being performed by either a full-time, part-time or casual employee is identical. It is not a common occurrence that employees are asked to undertake removal work at the end or prior to the end of a shift of ordinary hours. Given the nature of the work being undertaken, it is more common that the body removal work is performed after and outside of ordinary business hours.
19. The change referred to above and the Commission's decision will have a significant financial impact on the funeral industry which is inconsistent with the modern awards objective, in circumstances where the Award provided an entitlement of two hours work or pay when:
 - (a) performing work on weekends (where the work was not funeral work, in which case the engagement is once again four hours); and
 - (b) performing body removal work (which typically involves a 'call out' to remove a single body from a premises and ordinarily does not take more than two hours to complete).
20. The cost of increasing the minimum engagement from two to four hours (particularly when that work is already paid for at overtime rates) for casuals undertaking weekend or removal work will be passed on to mourning families, particularly by smaller operators who cannot employ or will have limited numbers of permanent employees available to perform the same work for a lesser rate of pay.

JOURNALIST PUBLISHED MEDIA AWARD

21. We confirm that our clients are not pursuing any substantive matters in relation to this Award.

⁴ 24 July 2017 Submissions by ABI and NSWBC "Submissions in reply to Substantive Changes in the Award", paragraphs 4.6 and 4.7.

PLUMBING AND FIRE SPRINKLERS AWARD

22. The Australian Workers' Union (AWU) proposes that clause 13.3 of the Award be amended. This amendment would require an employer and employee, prior to the part-time employee commencing employment, to agree in writing on the employee's commencing times (as currently set out in clause 13.3(b) of the Plumbing Award) and finishing times. ABI and NSWBC do not oppose the inclusion of the words "finishing times" because:
23. In the exposure draft for the Plumbing Award, the Commission requested that the parties provide feedback concerning whether clause 13.14(d)(ii) of the exposure draft (which is identical to clause 16.4 of the Plumbing Award) is a permitted term. The Commission has expressed a provisional view that clause 16.4 of the Plumbing Award should be deleted as it has no work to do⁵.
24. ABI and NSWBC:
- (a) repeat and rely on its written submissions dated 4 August 2016; and
 - (b) agree with the submissions of BusinessSA and Ai Group in respect of this issue.
25. Accordingly, ABI and NSWBC submit that clause 16.4 of the Plumbing Award should be deleted in its entirety.

PROFESSIONAL EMPLOYEES AWARD

26. In response to the submissions sought in relation to the provisional view expressed at [623] of the Decision relating to how Schedule B should be amended to clarify that it includes the casual loading, we confirm that our clients are not opposed to the proposed amendment.

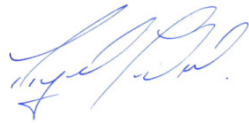
SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY AWARD

27. We have considered the FWC's provisional view expressed at [667] in relation to the replacement of references to "ordinary rate" and "appropriate rate" with the term "minimum rate" or "minimum hourly rate" and confirm that our clients do not object to this course of action.

⁵ [2018] FWCFB 1548 at [600]

SUPPORTED EMPLOYMENT SERVICES AWARD

28. In response to the FWC's comment at [669] in relation to the AWU proposal to replace the wording of clause 11.1, in the event said proposal is pressed our clients maintain their objection.



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

20 April 2018