



Fair Work Commission: 4 yearly review of modern awards

SUBMISSIONS: GROUP 1 AWARDS

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

13 MARCH 2019

BACKGROUND

1. These submissions relate to the exposure drafts for the majority of the Group 1 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 on 13 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 has a material interest in the following Group 1 awards which are dealt with in these submissions:
 - (a) Asphalt Industry Award 2010
 - (b) Black Coal Mining Industry Award 2010
 - (c) Cement and Lime Award 2010
 - (d) Cleaning Services Award 2010
 - (e) Concrete Products Award 2010
 - (f) Cotton Ginning Award 2010
 - (g) Manufacturing and Associated Industries and Occupations Award 2010
 - (h) Meat Industry Award 2010
 - (i) Mining Industry Award 2010
 - (j) Pharmaceutical Industry Award 2010
 - (k) Poultry Processing Award 2010
 - (l) Premixed Concrete Award 2010
 - (m) Quarrying Award 2010
 - (n) Salt Industry Award 2010
 - (o) Security Services Industry Award 2010
 - (p) Textile, Clothing, Footwear and Associated Industries Award 2010
 - (q) Timber Industry Award 2010
 - (r) Vehicle Manufacturing, Repair, Services and Retail Award 2010
6. ABI and NSWBC appreciate the opportunity to provide the following submissions on the Group 1 award exposure drafts.

ASPHALT INDUSTRY AWARD 2010

Schedule F - Definitions

7. The definition of 'casual ordinary hourly rate' in Schedule F of the exposure draft has been amended to read:

"casual ordinary hourly rate means the hourly rate for a casual employee for the employee's classification specified in clause 8 10, ~~inclusive of~~ plus the casual loading, industry allowance and inclement weather allowance"

8. This definition, although not technically inconsistent, is different from the description (as opposed to definitions) of the 'casual ordinary hourly rate' at A.3.1 which reads:

"Casual ordinary hourly rate includes the casual loading, industry allowance (clause 11.1(b)) and inclement weather allowance (clause 11.1(c)) which are payable for all purposes."

and is repeated on substantially similar terms in the footnotes to the tables of A.3.2 and A.3.3.

9. Our clients propose that for consistency, a better approach may be to replace the Schedule F definition with:

"casual ordinary hourly rate has the meaning given in clause A.3.1".

BLACK COAL MINING INDUSTRY AWARD 2010

10. Our clients have no submissions to make in respect of the revised exposure draft.

CEMENT AND LIME AWARD 2010

11. Our clients have no submissions to make in respect of the revised exposure draft.

CLEANING SERVICES AWARD 2010

12. Our clients have no submissions to make in respect of the revised exposure draft.

CONCRETE PRODUCTS AWARD 2010

Clause 13.3(e)

13. Clause 13.3(e) does not appear to have been amended in accordance with [2018] FWCFB 3802 at [125] and [144].

Clauses 13.4(c) and (d)

14. Clauses 13.4(c) and (d) do not appear to have been deleted in accordance with [2018] FWCFB 3802 at [125]

COTTON GINNING AWARD 2010

15. Our clients have no submissions to make in respect of the revised exposure draft.

MANUFACTURING AND ASSOCIATED INDUSTRIES AND OCCUPATIONS AWARD 2010

16. Note 2 at clause 31.7 should be amended to read "the Act" rather than "the Fair Work Act", consistent with the other changes that have been made to the exposure draft.

17. The two Notes at clause 31.13 should be amended to read “the Act” rather than “the Fair Work Act”, consistent with the other changes that have been made to the exposure draft.

MEAT INDUSTRY AWARD 2010

Clause 8.5(b)

18. The Commission has enquired whether the words “*and any ancillary products*” should be added after the reference to “*meat products*” in clause 8.5(b).
19. Our clients do not oppose the addition of these words to the relevant clause.

Clause A.2.4

20. The Commission has enquired whether the words “*and any ancillary products*” should be added after the reference to “*meat products*” in clause A.2.4.
21. Our clients do not oppose the addition of these words to the relevant clause.

Schedule H - Definitions

22. The Commission has enquired whether the words “*and any ancillary products*” should be added after the reference to “*meat products*” in Schedule H.
23. Our clients do not oppose the addition of these words to the relevant clause.

MINING INDUSTRY AWARD 2010

24. Our clients have no submissions to make in respect of the revised exposure draft.

PHARMACEUTICAL INDUSTRY AWARD 2010

Clause 8.2 (a)

25. Clause 8.2(a) was amended in accordance with [2018] FWCFB at [308] to clarify that the weekly ordinary hours of work (being an average of 38) applied only to full time day workers.
26. Our clients question whether a similar amendment is required to clarify clause 8.3(a) which prescribes the weekly ordinary hours of work for shiftworkers.

POULTRY PROCESSING AWARD 2010

Clause 3.2

27. The definition of ‘poultry processing industry’ in clause 3.2 is missing a full stop at the end of the sentence.

Schedule G - Definitions

28. Schedule G of the revised exposure draft contains a full definition of ‘poultry processing industry’.
29. This is inconsistent with [2017] FWCFB 3433 at [339] where it was determined that industry definitions in the definition schedules would simply refer readers to the relevant coverage clause, where the definition would be retained in full.

PREMIXED CONCRETE AWARD 2010

30. Our clients have no submissions to make in respect of the revised exposure draft.

QUARRYING AWARD 2010

31. Our clients have no submissions to make in respect of the revised exposure draft.

SALT INDUSTRY AWARD 2010

32. Our clients have no submissions to make in respect of the revised exposure draft.

SECURITY SERVICES INDUSTRY AWARD 2010

Monitoring centre definition

33. The 25 January 2018 exposure draft contains a definition of “monitoring centre as follows:

*“**monitoring centre** means a facility that remotely monitors intruder alarm systems (in compliance with AS 2201.2, Intruder alarm systems, Part 2: Monitoring centres) and provides specific responses that do not require any employee working at the centre to physically attend the location of any alarm.”*

34. This definition differs from the current award drafting, which describes a central station/monitoring station as follows:

*“**Central station** (also known as “monitoring station”) means a facility that remotely monitors intruder alarm systems from sites that are not co-located with the centre and complies with AS 2201.2, which monitors intruder alarm systems and provides specific responses. Central station staff do not themselves physically attend the location of any alarms.”*

35. It is not apparent to our clients why the definition has been changed and in particular, why the phrase “from sites that are not co-located with the centre” has been removed from the current award drafting.

36. As this appears to be a substantive change, our clients consider that the change should not be made unless a merit basis has been established for the making of the change (with the parties having had the opportunity to comment and address any such merit basis).

Example 5 - Public holiday falling during temporary close down

37. The current award provides as follows in relation to public holidays during periods of close down:

*“**24.9(c)** Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.”*

38. The exposure draft seeks to replicate this entitlement at clause 23.4(e):

“An employee must be taken not to be on leave on any public holiday that falls during a temporary close down period. The employer is to pay the employee for the public holiday as the Award requires.”

39. Our clients do not object to this rearticulation of clause 24.9(c) of the award in the exposure draft (at clause 23.4(e)).

40. However, an example is then included in the exposure draft following clause 23.4(e) which does not appear consistent with the above two clauses.

41. The Example provides as follows:

“Example 5—Public holiday falling during temporary close down period

An employer has arranged a temporary close down period that includes New Year’s Day.

For each employee who would normally have worked on the day that is New Year’s Day, the employee must pay them their normal rate of pay for that day as though:

- *it were not a public holiday; and*
- *they had worked that day.*

*So if on the day that is New Year’s Day the employee would have worked 8 hours at their ordinary hourly rate and **2 hours at 150% of their ordinary hourly rate, then they are to be paid for that same number of hours at those same rates.**”*

42. This Example sits inconsistently with the exposure draft because:

- (a) It says payment is to be provided as if the day were not a public holiday. It is not apparent why this is the case. The award provision is seeking to ensure that the public holiday is treated as a public holiday instead of a day of leave.
- (b) It requires payment for non attendance on a public holiday in excess of the payment obligations arising under the award and NES. This is because:
 - (i) The award requires employees to be paid on a public holiday in accordance with the NES.
 - (ii) The NES (at section 116 of the FW Act) in turn requires employees to be paid at their base rate of pay for their ordinary hours of work on the public holiday.
 - (iii) The Example’s reference to an employer paying 2 hours at 150% to an employee on a public holiday is likely to suggest payment obligations that exceed the NES entitlements.
 - (iv) The Example is accordingly unhelpful for employers and employees seeking to understand the payment obligations arising under this clause.

TEXTILE, CLOTHING, FOOTWEAR AND ASSOCIATED INDUSTRIES AWARD 2010

Clause 5

43. Clauses 5.2 to 5.4 of the exposure list the facilitative provisions contained in the award.

44. Unlike in most modern awards, clauses 5.2 to 5.4 do not cross reference the appropriate clause for each facilitative provisions.

45. Our clients propose that including the relevant clause numbers would assist both employers and employees reading the award.

Clause F.5.8

46. Clause F.5.8 of the exposure list the award provisions that do not apply to outworkers.
47. The cross reference next to 'Dispute resolution' has been updated to read "*clauses 29 and 29.2*".
48. This appears to be inconsistent with [2018] FWCFB 3802 at [401] which adopted the TCFUA submission to update the cross reference to read "*clauses 29.1 and 29.2*".
49. Our clients also note that none of the other provisions listed in clause F.5.8 contain a cross reference and submit that their inclusion would both provide consistency and assist employers and employees reading the award.

Clause C.3.2

50. Footnote 1 to the table in clause is incomplete and reads "*Payment per shift in addition to applicable*".
51. Our clients submit that the words "*applicable ordinary hourly rate.*" should be added to the end of the footnote.

TIMBER INDUSTRY AWARD 2010

Clause 19

52. The numbering of clause 19 appears inconsistent with both the relevant determination (PR606396) and usual numbering applied to modern awards in general.
53. The two subclauses have been numbered 19(a) and 19(b) whereas 19.1 and 19.2 would appear to be more appropriate.

VEHICLE MANUFACTURING, REPAIR, SERVICES AND RETAIL AWARD 2010

54. Our clients have no submissions to make in respect of the revised exposure draft.



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

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