



Fair Work Commission: 4 Yearly Review of Modern Awards

SUBMISSIONS

**CLERKS - PRIVATE SECTOR AWARD 2015
PLAIN LANGUAGE AWARD SPECIFIC CLAUSES
(AM2014/219)**

28 FEBRUARY 2017

**AUSTRALIAN BUSINESS INDUSTRIAL
- and -
THE NSW BUSINESS CHAMBER LTD**

1. BACKGROUND

- 1.1 These submissions are filed on behalf of Australian Business Industrial (**ABI**) and the NSW Business Chamber Ltd (**NSWBC**) and relate to the plain language Award-specific clauses of the *Clerks-Private Sector Award 2015 (Award)* published on 3 February 2017.
- 1.2 ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) and has some 4,200 members.
- 1.3 NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009* (Cth) and has some 18,000 members.
- 1.4 ABI and NSWBC have a material interest in the Four Yearly Review of the Award given that both entities represent numerous employers who are covered by the Award.
- 1.5 The same numbering as the revised plain language Exposure Draft has been used throughout these submissions, except where otherwise indicated.

2. CLAUSE 4 - COVERAGE

- 2.1 The new Clause 4.1(a) has omitted the words “*with respect to their employees*” engaged in clerical work, in reference to employers covered by the Award.
- 2.2 ABI and NSBWC submit that the re-drafted clause may lead to confusion as to whether employers are only covered by the Award if the predominant part of their business is the engagement of employees “*wholly or principally in clerical and administrative work*”. The practical reality is that many employers covered by the Award are also covered by another modern award which covers the substantive part of their business.

3. CLAUSE 10 - PART TIME EMPLOYMENT

- 3.1 We note the Drafter’s question regarding whether the re-drafted clauses 10.5 and 10.6 accurately reflect the intention of the current clause 11.4.
- 3.2 ABI and NSWBC consider that clause 10.5 is an accurate reflection of the first sentence of the current clause 11.4; that is, to require that a change in the quantum of hours to be worked in a week may only be made by agreement in writing between the employee and employer.
- 3.3 Clause 10.6 accurately deals with the subject matter of the second sentence of the current clause 11.4.
- 3.4 However, there does not appear to be a method by which the starting and finishing times of a part time employee, which must be agreed at the time of engagement in accordance with clause 10.4(c), can be altered. This is a matter which should be the subject of further discussion between the parties.

4. CLAUSE 13 - ORDINARY HOURS OF WORK (EMPLOYEES NOT ENGAGED ON SHIFTS)

- 4.1 ABI and NSBWC submit that the reference to “*employees not engaged on shifts*” in the clause title may lead to some confusion, due to the common usage of the word “*shift*” to refer generally to a period of engagement, irrespective of start/finishing times.
- 4.2 Clause 13.1 is intended to remedy this confusion, but a reference to a definition contained in clause 25 does not necessarily achieve this outcome.
- 4.3 Notwithstanding these concerns, if referring to “*shifts*” as opposed to “*shiftworkers*” is preferred by the Drafter, we suggest the following wording for clause 13.1:

“Clause 13 applies to employees who are not engaged to work the ~~on~~ shifts ~~as~~ defined in clause 25.”

4.4 In response to the Drafter’s question, ABI and NSWBC agree that the spread of ordinary hours in clause 13.5 may be altered by up to one hour at both ends of the day pursuant to clause 13.6.

4.5 In response to the Drafter’s question, ABI and NSWBC submit that the new clause 13.7 does substantially capture the intention of the current clause 25.1(b). However, we submit that the ordering of clauses 13.7(a)(i) and (ii) should be reversed to improve the clarity of the clause, so that it reads:

(a) *“Clause 13.7 applies if each of the following applies:*

(i) *the majority of employees at ~~the~~ a workplace are covered by a modern award that sets a spread of hours other than that set out in clause 13.5; and*

(ii) *one or more employees covered by this award work closely with the ~~other~~ employees covered by the ~~a~~ other ~~different~~ modern award.”*

4.6 In clause 13.10, the words “*the span of*” have been omitted from the clause. We submit that the clause should be amended as follows:

“The employer and an employee may agree that the employee may take time off during ordinary hours and make up that time by working at another time during the span of ordinary hours.”

5. CLAUSE 14 - ROSTERED DAYS OFF (EMPLOYEES NOT ENGAGED ON SHIFTS)

5.1 The meaning of clause 14.2(a) is unclear. We submit it be amended to read:

“work longer hours each day ~~during the weekly~~ as part of the ordinary hours of duty”.

5.2 We also submit that clause 14.2(b) be amended to read:

“take a day off at some later time ~~in the cycle~~”.

This submission is made on the basis that a rostered days off will be fully accrued at the end of a twenty day cycle, to be taken during the *following* cycle.

5.3 Otherwise, we submit it is appropriate for this clause to be the subject of further discussion between the parties, due to the fact it has been significantly augmented during the plain language review process.

6. CLAUSE 15 - BREAKS (EMPLOYEES NOT ENGAGED ON SHIFTS)

6.1 We reiterate our submissions in relation to the reference to “*shifts*” and clause 13.1 in relation to clause 15.1.

6.2 The re-drafted clause appears to capture the same content as the existing clauses 26.1 and 26.2, but ABI and NSWBC submit that the issues relating to clarity have not been resolved.

7. CLAUSE 17 - PAYMENT OF WAGES

7.1 Clause 17.4 would be improved by the inclusion of words such as “*in accordance with*” or “*as set out in*” before the reference to clause 13.4.

8. CLAUSE 19 - ALLOWANCES

8.1 Clause 19.4(d) does not make it clear that the employee must be required to launder a uniform to be entitled to the allowance. We submit the following wording be included:

(d) *“If the uniform that is required to be worn by the employee needs to be laundered by the employee, the employer must pay the employee an allowance of: ...”*

9. CLAUSE 21 - PENALTY RATES (EMPLOYEES NOT ENGAGED ON SHIFTS)

9.1 We reiterate our submissions in relation to the reference to “*shifts*” and clause 13.1 in relation to clause 21.

9.2 In response to the Drafter’s query, we submit that clause 21.3 - Public holidays is better placed in the Penalty rates clause, as opposed to the Overtime clause. Otherwise, we submit that the re-drafted clause accurately reflects the intention of the current clause 31.3.

10. CLAUSE 22 - OVERTIME (EMPLOYEES NOT ENGAGED ON SHIFTS)

10.1 We reiterate our submissions in relation to the reference to “*shifts*” and clause 13.1 in relation to clause 22.

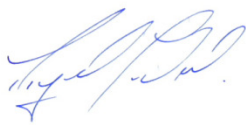
10.2 The word “*or*” also appears to have been omitted from clause 22.1(c), before “*as altered*”. The same has occurred in clause 21.2.

11. CLAUSE 33 - ANNUAL LEAVE


11.1 The word “*be*” has been erroneously included after “*the employee is*” and should be deleted.

12. CONCLUSION

12.1 In providing these comments, ABI and NSWBC seek to properly assist the Commission in the discharge of its discretion pursuant to section 156 of the *Fair Work Act 2009* (Cth). If you have any questions in relation to these submissions, please contact Kate Thomson on (02) 4989 1003.



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