
Fair Work Commission: 4 yearly review of modern awards

**SUBMISSIONS IN REPLY: TRANCHE 2 EXPOSURE
DRAFTS**

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

9 DECEMBER 2019

BACKGROUND

1. These submissions in reply 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*.
2. These submissions in reply respond to various submissions made in relation to 'Tranche 2' exposure drafts published by the Fair Work Commission in October 2019.
3. ABI and NSWBC appreciate the opportunity to provide the following submissions in reply.

PHARMACEUTICAL INDUSTRY AWARD

Response to Ai Group submission of 27 November 2019

Clause 2 - Standard Rate / C.1 - Wage-related allowances

4. ABI and NSWBC agree that the references to clause 15.1 should be replaced with clause 15.1(a).

Clauses 13.2 and 13.3 - Ordinary hours

5. Our clients continue to support the joint submission filed by Ai Group on 23 October 2019.

Clause 19.1 - Definition of Overtime

6. ABI and NSWBC agree that, under the current award, work performed on a public holiday is not automatically considered overtime, and in many cases would be ordinary hours.
7. We note that the heading of clause 25 in the current award is "*Overtime **and penalty rates***" (emphasis added), yet the rates outlined in this clause are all defined as overtime in clause 19.1 of the exposure draft.
8. Our clients note that neither the award nor the exposure draft contain a definition of "*rostered day off*". Whether work performed on such a day would be ordinary hours or overtime would depend on how the employer has structured the ordinary hours of work.
9. It may also be appropriate to include a footnote in the tables set out at clauses B.2 and B.4, drawing attention to the fact that clause 19.3 allows for a future day off in lieu of payment at the 250% rate.

Clause 19.2 - Overtime rates

10. ABI and NSWBC agree that the current drafting appears to suggest that a minimum payment of three hours applies for the first two hours worked on a Saturday, with a further minimum payment of three hours applying thereafter.

Proposed Variation

11. Clause 19.1 should be varied to address the issues outlined above. Our clients consider that such variation must clarify what is considered part of an employee's ordinary hours of work and what is overtime.
12. Ai Group's proposed variations do not provide any clarity in relation to this should not be adopted in their current form.

POULTRY PROCESSING AWARD

Response to Ai Group submission of 27 November 2019

13. ABI and NSWBC agree with Ai Group's submissions in relation to this award.

CLERKS - PRIVATE SECTOR AWARD

Response to Ai Group submission of 27 November 2019

Clause 11.5(k)(ii) - Casual conversion

14. Our clients agree with Ai Group's submissions in relation to this clause.

COMMERCIAL SALES AWARD

Response to Ai Group submission of 27 November 2019

Use of 'minimum hourly rate'

15. ABI and NSWBC do not consider the use of both "*minimum hourly rate*" and "*applicable minimum hourly rate*" to be confusing.
16. Our clients do not oppose the references to "*minimum hourly rate*" identified by Ai Group being varied to "*applicable minimum hourly rate*" for the sake of consistency.

EDUCATIONAL SERVICES (SCHOOLS) GENERAL STAFF AWARD

Response to Federation of Parents and Citizens Associations of NSW submission of 27 November 2019

17. ABI and NSWBC consider the definition of "*school education industry*" to limit the coverage of the award to employers who are directly involved with the provision of education in a school setting.
18. It seems unlikely that a Parents and Citizen's Association would fall within this definition.
19. At this stage, our clients have not considered whether it would be appropriate for the award to be varied to extend coverage. Such a change would be substantive and fall outside of the intended scope of the technical and drafting review of exposure drafts.

Response to the Association of Independent Schools submission of 27 November 2019

Clause 12.2 - Calculating annual salary for an employee on leave without pay during non-term weeks

20. In their submissions, the Association of Independent Schools (**AIS**) raise a concern in relation to clause 12.2 which outlines how the annual salary is to be calculated for employees who take leave without pay during non-term weeks.
21. ABI and NSWBC make a number of observations in relation to this concern and to the operation of clause 12.2 generally.
22. Firstly, unlike the minimum weekly rate, the annual salary in clause 17.1 is not expressed to apply to full-time employees. It may be appropriate to amend the heading of the table in clause 17.1 to clarify that this is the case.
23. Secondly, clause 12.2 applies to employees who are required to take leave without pay during non-term weeks in accordance with clause 12.1.
24. The purpose of the annualised salary is not explicitly set out in the exposure draft but it can be inferred from clause 12.2(d) that, unless otherwise agreed in writing, such employees are to be paid an annual salary in equal instalments each pay period.
25. This results in:
 - (a) employees continuing to receive payments during pay periods that contain non-term weeks; and
 - (b) employees receiving proportionally less pay for each hour worked during pay periods that contain term weeks.
26. By virtue of the definition in clause 10.1(b), all such employees are part time, notwithstanding the fact that they may work 38 hours per week during term-time.
27. Our clients question whether clause 12.2 is inconsistent with clause 10.2 which states that

*“A part-time employee **will be paid the minimum hourly rate** for the relevant classification in clause 17—Minimum rates **for each hour worked**”* (emphasis added).
28. It may be appropriate to add in a subclause at the start of clause 12.2 stating that:

“Notwithstanding clause 10.2, an employee who is required to take leave without pay during non-term weeks is to be paid an annual salary in equal instalments each pay period.”
29. In relation to formula in clause 12.2(b), ABI and NSWBC agree with the AIS that it should be amended to avoid ambiguity. An alternative amendment may be:

“C means:

 - (i) *where the employee works 38 ordinary hours per week during term weeks - the annual salary for the employee's classification (as contained in clause 17-Minimum rates); or*

- (ii) *where the employee works less than 38 ordinary hours per week during term weeks - the minimum hourly rate for the employee's classification (as contained in clause 17-Minimum rates) multiplied by the employee's weekly ordinary hours multiplied by 52.18 and rounded to the nearest dollar amount."*
30. Finally, the example provided at the end of clause 12 also contains an error. It states that "*Brad is a full-time employee*". As Brad is required to take leave without pay during non-term weeks he falls within the definition of a part-time employee as set out in clause 10.1(b).
31. The words "*Brad is a full-time employee*" should be replaced with "*Brad works 38 hours per week during term weeks.*"

Clause 16.1 - Unpaid meal breaks.

32. ABI and NSWBC support the reinstatement of the words "*no less than*" into this clause.
33. Our clients do not oppose the reinstatement of the word "*consecutive*" into this clause but question whether it is required. The singular expression of "***an** unpaid meal break*" indicates that the 30 minutes must be taken consecutively.

Clause 14 - Ordinary hours of work – employees other than shiftworkers

34. Clause 14.2 states that:
- "The ordinary hours of work for a ... casual employee will be in accordance with ... clause 11- Casual employees."*
35. Clause 11 does not prescribe the ordinary hours for casual employees.
36. ABI and NSWBC note that the [draft determination](#) filed by the AIS in matter AM2017/51 (Overtime for casuals) contains a definition of ordinary hours for casual employees that would remedy this.

ASPHALT AWARD

Response to Ai Group submission of 27 November 2019

37. ABI and NSWBC agree with Ai Group's submissions in relation to this award.

Response to AWU submission of 27 November 2019

38. ABI and NSWBC agree with AWU's submissions in relation to this award.

CONCRETE PRODUCTS AWARD

Response to Ai Group submission of 27 November 2019

39. Save for the submission in [39], ABI and NSWBC agree with Ai Group's submissions in relation to this award.
40. Our clients do not oppose retention of 11.3(c).

Response to AWU submission of 27 November 2019

41. ABI and NSWBC agree with AWU's submissions in relation to this award.

MANUFACTURING AND ASSOCIATED INDUSTRIES AND OCCUPATIONS AWARD

Response to Ai Group submission of 27 November 2019

42. ABI and NSWBC agree with Ai Group's submissions in relation to this award.

Response to AWU submission of 27 November 2019

43. ABI and NSWBC agree with AWU's submissions in relation to this award.

Response to AMWU submission of 27 November 2019

44. ABI and NSWBC acknowledge the apparent difficulty with the definition of "*ordinary hourly rates*" and agree that this needs to be resolved.

PASTORAL AWARD

Response to NFF submission of 27 November 2019

45. ABI and NSW do not agree with the second sentence of the NFF submission in respect of cl 17.2(b). It appears such allowances are calculated as a percentage of the standard rate which is a defined term.
46. Save for this, ABI and NSWBC agree with NFF's submissions in relation to this award.

Response to AWU submission of 27 November 2019

47. In respect of the AWU submission concerning clause 19.2, ABI and NSWBC do not consider removal of the example necessary. It merely identifies the hourly annual leave entitlement for a 38 hour per week employee.
48. Save for this, ABI and NSWBC agree with AWU's submissions in relation to this award.

DRY CLEANING AND LAUNDRY INDUSTRY AWARD

Response to CFMMEU submission of 6 November 2019

49. ABI and NSWBC agree with the CFMMEU's submissions in relation to this award.

Filed on behalf of Australian Business Industrial and the NSW Business Chamber Ltd

9 December 2019