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**Fair Work Commission: 4 yearly review of modern awards**

## **SUBMISSIONS: TRANCHE 1 EXPOSURE DRAFTS**

**AUSTRALIAN BUSINESS INDUSTRIAL**

**- and -**

**THE NSW BUSINESS CHAMBER LTD**

**27 SEPTEMBER 2019**

## BACKGROUND

1. In a Decision<sup>1</sup> issued on 2 September 2019 (**Decision**) the Commission provided an updated 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.
2. This process involves the release and review of updated exposure drafts in three tranches. The first tranche of updated exposure drafts (**Tranche 1**) was released on 2 September 2019. Draft determinations giving effect to the updated exposure drafts were released concurrently.
3. The Commission directed interested parties to file written submissions on the content of the updated Tranche 1 exposure drafts by 20 September 2019. An extension until 27 September 2019 was later granted to all parties.
4. The Commission also directed parties to comment on the provisional view that:

*“the variation of the modern awards in tranche 1 in accordance with the draft variation determinations ... is, in respect of each of these awards, necessary to achieve the modern awards objective”.*
5. 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*.
6. ABI and NSWBC have a material interest in the following Tranche 1 awards:
  - (a) Cement and Lime Award;
  - (b) Cotton Ginning Award;
  - (c) Mining Industry Award;
  - (d) Premixed Concrete Award;
  - (e) Salt Award;
  - (f) Graphic Arts, Printing and Publishing Award;
  - (g) Pharmacy Industry Award;
  - (h) Seafood Processing Award;
  - (i) Banking, Finance and Insurance Award;
  - (j) Business Equipment Award;
  - (k) Gardening and Landscaping Services Award;
  - (l) Legal Services Award;
  - (m) Nursery Award;
  - (n) Real Estate Industry Award;
  - (o) Telecommunications Services Award;

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<sup>1</sup> [2019] FWCFB 6077

- (p) Cemetery Industry Award; and
- (q) Funeral Industry Award.

## **OUTSTANDING COMMON MATTERS**

7. Our clients note that at paragraph [8] of the Decision, the Full Bench acknowledged that there were various common issue matters that were yet to be finally determined. This includes the 'Overtime for casuals' matter<sup>2</sup>.
8. A number of the updated Tranche 1 exposure drafts published on 2 September 2019 contain summary tables setting out the overtime rates for casual employees (in dollar terms).
9. The calculation of some of these rates is currently in dispute as part of the 'Overtime for Casuals' matter. The tables in the relevant exposure drafts contain a disclaimer, stating that:

*"A Full Bench has been constituted in AM2017/51 to deal with the issue of overtime for casuals. The rates in the tables below dealing with overtime for casuals will not become operative until a decision is made in that matter and only to the extent that they are consistent with the decision."*
10. ABI and NSWBC agree with the Commission that the summary tables should not be given effect until the relevant decision is handed down.
11. It is, however, not immediately clear whether the Commission intends to:
  - (a) publish the updated awards without these tables, inserting them at a later time after the relevant Full Bench hands down its decision; or
  - (b) publish the updated awards with the tables as currently set out in the exposure drafts, along with a disclaimer that the rates are not yet operational and are subject to a further decision of the Commission.
12. ABI and NSWBC submit that the first of these options is the most appropriate.
13. Our clients also submit that, if the relevant Full Bench has not yet handed down its decision, a similar process should be undertaken in relation to updated exposure drafts in the second and third.

## **GRAPHIC ARTS, PRINTING AND PUBLISHING AWARD**

### **Clause 4.3**

14. Our clients consider that the insertion of the words in the first sentence of this clause is unnecessary and problematic. The new wording does not appear to make sense on any ordinary reading of the words. On-hire employers do not "supply labour on an on-hire basis" in the "occupations". They would only supply labour in the "industry".
15. To the extent that such labour hire employees are supplied to businesses outside of the "industry" as defined, the occupational scope of the Award may apply to that

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<sup>2</sup> AM2017/5

work/engagement. However, that may depend on the particular industry into which the employee is being on-hired.

16. Separately, there is a typographical error. If the included wording is to be retained, the word “industry” that follows the included words needs to be deleted.

#### **Clause 4.5**

17. The submissions made above in relation to clause 4.3 apply equally in relation to this clause.

### **CEMENT AND LIME AWARD**

#### **Clauses 4.4 and 4.5**

18. References to the ‘cement and lime and quarrying industry’ are problematic.
19. The ‘cement and lime industry’ and ‘quarrying industry’ are separately defined and there is no definition of the ‘cement and lime and quarrying industry’.
20. Retention of the phrase ‘cement and lime and quarrying industry’ may be interpreted as requiring membership of both industries. Instead of ‘cement and lime and quarrying industry’, ‘cement and lime industry’ and ‘quarrying industry’ should be used.

#### **Clause 14.5**

11. The words ‘two half days’ has been replaced with ‘2.5 days’. This is an obvious error.

### **REAL ESTATE INDUSTRY AWARD**

#### **Clause 17.4 (a)**

21. As identified in our submissions of 29 March 2019, the allowances clause contains a cross referencing error.
22. The references to “*clauses 17.1 or 17.3*” should refer to “*clauses 17.2 or 17.3*”.

### **OTHER INDIVIDUAL EXPOSURE DRAFTS**

23. Our clients have reviewed each of the remaining updated exposure drafts in which they have an interest and have no comments to make in relation to any of the amendments.
24. It appears to ABI and NSWBC that the amendments made to the exposure drafts have been made to either:
  - (a) implement a decision of the Fair Work Commission (determined on the basis that it was required to meet the modern awards objective); or
  - (b) correct a minor technical or drafting error.
25. Accordingly, our clients agree with the Commission’s provisional view that the variation of the modern awards (set out in paragraph 6 above) in accordance with the draft variation determinations is necessary to achieve the modern awards objective.



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

**27 September 2019**