
Fair Work Commission: 4 yearly review of modern awards

**SUBMISSIONS IN REPLY: GROUP 4D-F
EXPOSURE DRAFTS**

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

22 FEBRUARY 2017

1. BACKGROUND

1.1 These reply submissions relate to the Exposure Drafts of Group 4D-F Awards. Pursuant to the Amended Directions of 21 December 2016, interested parties were directed to file submissions on the technical and drafting issues relating to most of the Group 4D-F Exposure Drafts by 18 January 2017, and reply submissions by 22 February 2017.

1.2 These reply 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*.

1.3 ABI and NSWBC has a material interest in the following Group 4 D, E & F Awards:

Sub-group 4D

- (a) *Amusement, Events and Recreation Award 2010;*
- (b) *Broadcasting and Recorded Entertainment Award 2010;*
- (c) *Journalists Published Media Award 2010;*
- (d) *Racing Clubs Events Award 2010;*

Sub-group 4E

- (e) *Cemetery Industry Award 2010;*
- (f) *Food, Beverage and Tobacco Manufacturing Award 2010;*
- (g) *Funeral Industry Award 2010;*
- (h) *Professional Employees Award 2010;*

Sub-group 4F

- (i) *Dry Cleaning and Laundry Industry Award 2010;*
- (j) *Fast Food Industry Award 2010;*
- (k) *Hair and Beauty Industry Award 2010;* and
- (l) *Registered and Licensed Clubs Award 2010.*

1.4 ABI and NSWBC appreciate the opportunity to provide the following reply submissions on the Group 4 D, E and F Exposure Drafts.

2. AMUSEMENT, EVENTS AND RECREATION AWARD 2010

2.1 Clause 1.1: The AWU has correctly identified that the name of the Award in clause 1.1 is incorrect.

2.2 Clause 1.1: The provision referred to by the AWU is located at clause 5 of the Exposure Draft.

2.3 Clause 4.2(c): Our clients are not opposed to the AWU submission regarding the cross-referencing of this provision.

2.4 Clause 7.2: The AWU submission is correct and should be adopted.

3. BROADCASTING AND RECORDED ENTERTAINMENT AWARD 2010

- 3.1 Clause 16.7: Our clients support with the Commercial Radio Australia Ltd (**CRA**) and Seven Network (Operations) Limited, Nine Network Pty Ltd and Network Ten Pty Ltd (**TV Networks**) submissions that clause 16.7 needs to be amended to ensure the amount paid in respect of annual leave does not (inadvertently) include 'other penalties' such as shift rates, penalty rates, special rates or reimbursement for expenses.
- 3.2 Clause 34: Our clients support the TV Networks' submission that the 10% directors allowance applies to the minimum rate for the director's classification.

4. JOURNALISTS PUBLISHED MEDIA AWARD 2010

- 4.1 We do not have any reply submissions to make in respect of this Award.

5. RACING CLUBS EVENTS AWARD 2010

- 5.1 Clause 13.4: Our clients agree with the AWU submission that the term 'hare driver' should be replaced with 'lure driver' to reflect current industry terminology.
- 5.2 Clause 19: The AWU submission relating to payment of wages represents a substantive claim. To the extent that the AWU wish to pursue the matter, we would consider that it should be dealt with as part of the common issues 'payment of wages' proceedings (AM2016/8).
- 5.3 Clause 20: Our clients consider that the term 'employee' is sufficiently clear and do not consider the additional wording proposed by the AWU to be necessary.
- 5.4 Clause 20: Our clients agree with the AWU that the clause numbering in clause 20 of the Exposure Draft requires correcting.
- 5.5 Clause 20.2(d): Our clients agree with the AWU that the figure provided for the Meal Allowance needs to be updated to \$10.98.

6. CEMETERY INDUSTRY AWARD 2010

- 6.1 We do not have any reply submissions to make in respect of this Award.

7. FUNERAL INDUSTRY AWARD 2010

- 7.1 Clause 18.6: Our clients oppose the submissions of the AWU and United Voice regarding the meaning of "applicable rate". Our clients consider that the 150% loading is calculated on the basis of the minimum hourly rate and that the words "applicable rate" should be read as "applicable minimum hourly rate" for consistency with other clauses.
- 7.2 Clause 19.1(b): Our clients oppose the submission of the AWU in relation to the inclusion of the term "appropriate". Our clients consider this inclusion unnecessary as clause 19.1(a) provides for the loadings applicable for work performed outside the hours fixed as the times for starting and finishing work, including work before 7:00am or after 7:00pm.
- 7.3 Clause 20: Our clients oppose the submissions of the AWU and United Voice. Our clients consider that these clauses are intended to cover the field for this type of work, as they provide for minimum engagement periods in these scenarios including part-time and casual employment.

8. FOOD, BEVERAGE AND TOBACCO MANUFACTURING AWARD 2010

- 8.1 Clause 9.3: The AWU submission represents a substantive variation to the Award which not the purpose of the current exercise. Our clients oppose the AWU submission.
- 8.2 Clause 4 - Coverage: Our clients do not support a reordering of the coverage clause in the manner suggested by the AMWU and considers the drafting in the Exposure Draft as being sufficient and readily capable of comprehension.
- 8.3 Clause 10.1 - Casual employment (and clause 8): Our clients disagree with the submission of the AWU. The AWU's proposal has the effect of changing the definition of "casual employee". It is a substantive variation and is not the purpose of the current exercise. Further, the Exposure Draft sets out the ordinary hours of casual employees at clauses 12.2-12.4.
- 8.4 Clause 8: Our clients oppose the submission of the AWU to insert the words "*A full time employee may be engaged for up to 38 ordinary hours per week*" for the reasons articulated in paragraph 8.3 above.
- 8.5 Clause 12.3: The AWU helpfully points out the typographical error at clause 12.3 where the word "*worked*" appears instead of "*work*".

9. PROFESSIONAL EMPLOYEES AWARD 2010

- 9.1 We do not have any reply submissions to make in respect of this Award.

10. DRY CLEANING AND LAUNDRY INDUSTRY AWARD 2010

- 10.1 Schedule C.3: Our clients disagree with the TCFUA's submission that the method of calculation is incorrect.

11. FAST FOOD INDUSTRY AWARD 2010

- 11.1 Clauses 2, 10.7, 11.1(a) - Minimum hourly rate: We disagree with the AWU submission that the use of the phrase "minimum hourly rate" at clauses 2, 10.7, and 11.1(a) has the potential to cause confusion but do not enunciate any reasoning in support of the assertion. We note the Full Bench decision in [2015] FWCFB 4658.
- 11.2 Clause 15.1 - Breaks: The AWU and SDA submissions outline opposition to the wording in the Exposure Draft at clause 15.1 in respect of breaks and prefer the existing wording. Our clients do not believe confusion exists in the wording in the Exposure Draft and confirm support for the adoption of such wording. We observe the approach adopted by Ai Group in respect of the deletion of the word "between" where it appears in clause 15.1 and the insertions of "*4 hours but less than 5 hours*" and "*5 hours but less than 9 hours*". We do not believe such an approach is necessary as the clause in the Exposure Draft is readily capable of comprehension, however we would not oppose the amendments sought by Ai Group.
- 11.3 Clause 16.1 - Adult wages: The AWU and SDA submissions seek the deletion of the word "*adult*" at clause 16.1 of the Exposure Draft. The SDA claim that the insertion of the word unnecessary on the basis that an employer can choose to pay the full rate to a junior or may pay in excess of the minimum rates. Our clients oppose the deletion on the basis that it would lead to confusion when reading 16.1 and 16.2 as a whole. If the word

"adult" was not present, the clause would require payment of the minimum rates of pay to *all* employees.

- 11.4 Clause 17.2(a)(i) - Meal allowance: The SDA seek an amendment to the wording of clause 17.2(a)(i) on the basis that the clause "reads with difficulty" and proposes alternative wording. Ultimately, our clients do not believe alternative wording is necessary, however if the proposed wording is to be adopted, our clients suggest deletion of the word "they" and insertion of the words "the employee" for consistency.
- 11.5 Clause 32 - Transfer to lower paid job on redundancy: The SDA suggests the existing wording "transfer to lower paid duties" should be retained. The wording in the Exposure Draft makes the provision more readily capable of understanding and should be retained.
- 11.6 Schedule B.2.1: The SDA makes various suggested amendments to Schedule B.2.1 but does not provide any reasoning to accompany the proposals. Our clients' do not consider the amendments are necessary and submit the wording in the Exposure Draft is sufficient.

12. HAIR AND BEAUTY INDUSTRY AWARD 2010

- 12.1 We do not have any reply submissions to make in respect of this Award.

13. REGISTERED AND LICENSED CLUBS AWARD 2010

- 13.1 Clause 25: Our clients do not oppose the proposal by the Club Managers Association Australia.
- 13.2 Clause 7: Our clients agree with the Business SA submission.
- 13.3 Clause 11.3: Our clients agree with the Business SA submission.
- 13.4 Clause 13.1: Our clients prefer the United Voice's submission over the AWU position.
- 13.5 Clause 15.8(e): Our clients agree with United Voice's submission.
- 13.6 Clause 18.4(a): In response to the AWU submission, our clients note that clause 18.4(a) outlines a minimum hourly rate inclusive of casual loading. If applied strictly, applying the loadings outlined in the table under clause 24.1 to the clause 18.4(a) minimum hourly rate would result in a 25% loading on an already loaded rate. This would be an error.

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

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