AUSTRALIAN BUSINESS
Lawyers & Advisors

Fair Work Commission: 4 yearly review of modern awards

SUBMISSIONS: GROUP 4A-C EXPOSURE DRAFTS

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

1 JULY 2016

1. BACKGROUND

1.1 These submissions relate to the Exposure Drafts of group 4A-C awards released in May 2016.

1.2 In Directions issued on 10 May 2016, the Fair Work Commission (**Commission**) directed interested parties to file comprehensive written submissions on the technical and drafting issues related to the sub-group 4A-C Exposure Drafts by 30 June 2016.

1.3 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.

1.4 ABI and NSWBC has a material interest in the following Group 4 Awards:

(a) Sub-group A:

(i) Aboriginal Community Controlled Health Services Award 2010;

(ii) Aged Care Award 2010;

(iii) Children's Services Award 2010;

(iv) Educational Services (Teachers) Award 2010;

(v) Social, Community, Home Care and Disability Services Industry Award 2010;

(vi) Supported Employment Services Award 2010;

(b) Sub-group C

(i) Building and Construction General On-site Award 2010;

(ii) Electrical, Electronic and Communications Contracting Award 2010;

(iii) Joinery and Building Trades Award 2010;

(iv) Mobile Crane Hiring Award 2010; and

(v) Plumbing and Fire Sprinklers Award 2010.

1.5 ABI and NSWBC appreciate the opportunity to provide the following submissions on the Group 4A-C Exposure Drafts.

2. COMMON SUBMISSIONS ON THE EXPOSURE DRAFTS

New clause: 'Effect of variations made by the Fair Work Commission'

2.1 We note that a new clause has been inserted into the Group 4 Exposure Drafts titled *'Effect of variations made by the Fair Work Commission'*. In our submission, this clause is more appropriately located as a sub-clause of the 'Title and Commencement' clause after sub-clause 1.2 rather than as a standalone clause.

2.2 We also refer to paragraphs 2.6-2.11 of our 15 April 2016 submission in respect of the Group 3 Exposure Drafts where our clients submitted that the words 'as varied' should be removed from sub-clause 1.2 of the Exposure Drafts.

New sub-clause: Allowances

2.3 Many of the Exposure Drafts contain a new provision in the 'Allowances' clause which provides:

> *Employers must pay to an employee the allowances the employee is entitled to under this clause. See Schedule C for a summary of monetary allowances and method of adjustment.*

2.4 While we understand that the provision is designed to be an 'introductory' or 'signpost' provision, our clients are concerned that the provision is in fact a separate and additional legally enforceable term of the Award which contains within it an obligation which is additional to the more specific obligations for the payment of each allowance in applicable circumstances.

2.5 The consequence of the insertion of this new provision is that, where an employer fails to pay an allowance in a particular case will be exposed to penalties for breaches of two separate terms of the Award: firstly, a breach of the 'introductory' clause and, secondly, a breach of the provision detailing the specific allowance to be paid. While it might be said that a Court, in any prosecution proceedings, would view those two breaches together as occurring in the same course of conduct when considering the quantum of any penalty, it remains the case that under the Exposure Draft the employer would have committed two contraventions of the Award whereas there would only be one contravention under the current Awards.

2.6 In light of the potentially material adverse impact to employers, and the fact that the exposure draft process is not intended to amend any entitlements or obligations, this new provision should be deleted.

3. ABORIGINAL COMMUNITY CONTROLLED HEALTH SERVICES AWARD 2010

3.1 Clause 2: In response to the Commission's query in relation to the underlined text in the note attached to the definition of "Aboriginal health worker", the note can be deleted in circumstances where the national registration system was implemented as of 1 July 2012.

3.2 Clause 2: In response to the Commission's query in relation to the definition of "Aboriginal person", the Commission's proposed alternative wording is likely to create confusion. We recommend the definition read as follows:

> *"**Aboriginal**, when referring to a person, will be taken to include a Torres Strait Islander person."*

3.3 Clause 17.2(a)(i): The term "bilingual" has been defined firstly at clause 2 and then again defined in identical terms at 17.2(a)(i). The repeated definition in 17.2(a)(i) should be deleted, as it is superfluous. Alternatively, the clause could refer back to the definition at clause 2, rather than repeating the same definition word for word.

4. AGED CARE AWARD 2010

4.1 Clause 11.1: In response to the Commission's query, our clients do not consider it necessary to include a definition of "fixed term employee".

4.2 Clause 11.3: The words "and part-time" should be inserted between "full-time" and "employees".

4.3 Clause 23.2: In response to the Commission's query, we agree that clause 23.2(a)(ii) should clarify the period over which this is counted; our clients consider that 12 months is the intended period.

5. CHILDREN'S SERVICES AWARD 2010

5.1 Clause 11.1: This clause should retain the words "as such" which appear in the current Award. Our clients propose that the clause provide:

> "A casual employee is an employee engaged as such for temporary and relief purposes ..."

5.2 Clause 17.2(c): The word "who" should be included in this clause so it reads "An employee who works...".

5.3 Schedule C.2.1(a): The word "increased" should be replaced with "adjusted". The current wording presumes that any adjustment to the relevant figures will always be an increase, and the clause does not contemplate the possibility of deflation.

6. EDUCATIONAL SERVICES (TEACHERS) AWARD 2010

6.1 Clause 7.2: The list of facilitative provisions is potentially incomplete and we propose that the table be updated as follows:

Clause	Provision	Agreement between an employer and:
12.2	Casual employment	An individual
A.1.3	Ordinary hours of work—teachers employed in early childhood services	An individual
A.2	Rostered days off—teachers employed in early childhood services	An individual
A.3.1	Meal breaks—teachers employed in early childhood services	An individual
A.4.2	Time off instead of overtime payment—teachers employed in early childhood services	An individual

6.2 Clause 11.4: Our clients consider that the basis for calculation as currently set out under sub-clauses 11.4(a) and (b) actually causes more confusion than under the current Award as setting out the formula under sub-headings (a) and (b) appear to suggest that they are two different concepts. It may be more appropriate to maintain the wording as found in the current Award, or alternatively express the method of calculation as follows:

$$\frac{\text{Prescribed face-to-face teaching hours of the employee}}{\text{Usual prescribed face-to-face teaching hours of a full-time employee}}$$

6.3 Clause 14.4: In response to the FWC's question about whether a definition of years of service (similar to that provided in clause 14.2(b)) is necessary for the purposes of clause 14.4, ABI and NSWBC submit that a separate definition is not necessary.

6.4 Clause 18.2: To ensure consistency between clause 18.2 and Schedule C.1, references to levels should be re-inserted into clause 18.2. Our clients propose that this might be achieved by simply inserting the appropriate level in brackets after the number of places - e.g. Up to 39 places (Level 1).

6.5 Clause 21.3(b): The word 'or' should be inserted at the end of sub-clause 21.3(b)(i) after the words "preschool service date;".

6.6 Clause 30: The comparison document contains a note that clause 21.5 should be moved to be included in exposure draft clause 32 (Termination of Employment). As the Exposure Draft does not contain a clause 32, we have assumed taken this to mean clause 30 instead. It is also unclear whether this comment was included in error as the current Award does not contain a clause 21.5. If the reference to clause 21.5 is intended to refer to how the pro-rata salary inclusive of annual leave should be calculated on termination and the FWC considers this a necessary addition to clause 30, then the reference should be to clause 21 as a whole instead of clause 21.5 specifically.

6.7 Schedule A.2.12: The inclusion of this clause at Schedule A is odd given that Schedule A only applies to early childhood services operating for at least 48 weeks per year. However, as the remainder of the Award does not contemplate Rostered Days Off, it is questionable whether clause 15 is the appropriate place for this clause either.

6.8 Schedule C.2: A note or similar should be inserted at Schedule C.2 to clarify that payment of the vehicle allowances is capped at 400km per week (as set out in clause 18.4).

7. SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010

7.1 Clause 12.4: In response to the Commission's query, we agree that the language "each pay point within the level" should be adopted.

7.2 Clause 14.3(d): In response to the Commission's query, while it might be unlikely that many employers communicate rostering arrangements with employees via mail and/or facsimile, those methods of communication should be retained as they may still be used in certain circumstances.

7.3 Clause 14.3(e): In response to the Commission's query, we do not consider it necessary for the term 'relieving staff' to be defined.

7.4 Clause 14.7: In response to the Commission's query, it would seem that employees supervising clients in excursion activities involving overnight stays from home are only entitled to the benefits prescribed in clause 14.7 to the exclusion of those benefits prescribed in clause 14.5.

7.5 Clause 21.2: In response to the Commission's query, it would seem sensible to condition the language in clause 2.1.2 by a time period of 12 months.

8. SUPPORTED EMPLOYMENT SERVICES AWARD 2010

8.1 Clauses 15.3(d) and (e): These clauses should be joined together as per the current Award. By separating the provisions out into separate sub-clauses, it results in an apparent inconsistency between clauses 15.3(b) and 15.3(e).

8.2 Clause 16.4: This clause should read "Wage assessment tools referred to at clauses 16.2(a) to (v)" in order for it to make sense.

8.3 Clause 16.5: This clause should read "Wage assessment tools referred to at clauses 16.2(w) to (dd)" in order for it to make sense. The words "Analysis of Wage Assessment Tools used by Business Services" should also be italicised to ensure consistency with the formatting in clause 16.4.

8.4 Clause 16.9: This clause can likely be removed given it was a transitional provision and the timeframes referred to in the provision have now passed.

9. BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2010

9.1 Clause 7.2: There are a number of issues with the table in clause 7.2, as well as additional facilitative provisions contained within the Exposure Draft which are not referenced in the table in clause 7.2. We make the following comments in respect of the table:

(a) Clause 16.9(b) of the Exposure Draft provides that an employer may change the start time and have an early start if agreement is reached between the employer and the employees and their representative(s), if requested. This clause is not currently referenced in the table in clause 7.2 of the Exposure Draft as being a

facilitative provision. Accordingly, we submit that the following line should be inserted into the table in clause 7.2:

Clause	Provision	Agreement between and employer and:
16.9(b)	Early starts	The majority of employees

(b) Clause 16.9(b) of the Exposure Draft is unclear on whether agreement must be reached with "the majority of employees". Given that clause 16.9(b) refers to "employees" in the plural, it is likely that it is intended to apply to "the majority of employees". As such, we submit that clause 16.9(b) should be amended to clarify that is applies to an agreement reached between "the employer and the majority of employees". This will ensure that the wording of clause 16.9(b) is consistent with the proposed wording for the table in clause 7.2 of the Exposure Draft.

(c) Clause 23.14(a) is referred to in the table at clause 7.2 of the exposure draft as being a clause which can be modified if agreement is reached between the employer and the majority of employees. However, clause 23.14(a) refers to agreement between "the employer and employees". It is unclear whether this is meant to be a majority of employees or individual employees. Given that clause 23.14(a) refers to "employees" in the plural, it is likely that it is intended to apply to "the majority of employees". As such, we submit that clause 23.14(a) should be amended to clarify that it applies to an agreement reached between "the employer and the majority of employees". This will ensure that the wording of clause 23.14(a) is consistent with the table in clause 7.2 of the Exposure Draft.

(d) Clause 24.6 of the Exposure Draft states that where a charge is made for meals in a construction camp, the charge will be fixed by agreement between the employer and the majority of affected employees. This clause is not currently referenced in the table in clause 7.2 of the Exposure Draft as being a facilitative provision. Accordingly, the following line should be inserted into the table in clause 7.2:

Clause	Provision	Agreement between and employer and:
24.6	Camp meal charges	The majority of employees

9.2 Clause 12.5: In response to the query from the Commission, our clients submit that the casual hourly rate should be calculated by adding 25% to the hourly rate specified in clause 19.1. We note that clauses 19.3(a) or 19.3(b) set out the manner in which the hourly rates of pay are calculated for daily hire employees and weekly hire employees, which are different classes of employees to casuals. It would be inappropriate to calculate the casual hourly rate in accordance with clause 19.3(a) for daily hire because:

(a) the calculation of the daily hire rate factors in "the incidence of loss of wages for periods of unemployment between jobs". This component of the hourly rate for daily hire employees is inconsistent with someone engaged as an irregular casual (i.e. irregular casual employee is one who has been engaged to perform work on an occasional or non-systematic or irregular basis); and

(b) daily hire employees receive entitlements which casuals do not such as one day's notice of termination. Clause 12.5 of the Exposure Draft states that the casual loading is paid as compensation for annual leave, personal/carer's leave, community service leave, notice of termination and redundancy benefits and public holidays not worked.

9.3 Clause 19.1(c): Our clients consider that clause 19.1(c) should be removed from the Exposure Draft as clause 2 of the Exposure Draft already contains a definition of "CW" and "ECW".

9.4 Clause 21.12: In response to the query from the Commission, it would seem prudent for there to also be provision in this clause for the relevant electrician's licence for Western Australia, Australian Capital Territory and the Northern Territory.

9.5 Clause 26.3: This clause in the Exposure Draft sets out the definition of "accident pay". There is a definition of "accident pay" in clause 2 of the Exposure Draft. That being the case, we submit that it is unnecessary to reproduce the definition a second time in clause 26.3.

9.6 Clause 28.4: In response to the Commission's query, we consider that clause 28.4 should be amended to state 'outside or in addition to an employee's ordinary time of work', as this is consistent with clauses 16.1 and 16.2 and it clarifies the manner in which overtime applies to all employees (including casuals).

10. JOINERY AND BUILDING TRADES AWARD 2010

10.1 Clause 7.2: There is an additional facilitative provision at clause 18.1(b) which is not referenced in the table and should be included. Clause 18.1(b) states that an employee must be paid 200% of the ordinary hourly rate for all work done during a meal break, unless the employer and the employee agree to an alternative arrangement. Accordingly, we submit that the following line should be inserted into the table in clause 7.2:

Clause	Provision	Agreement between and employer and:
18.1(b)	Alternative arrangement concerning meal break	The individual employee

10.2 Clause 13.16: In response to the Commission's query regarding whether this clause is still required, we note that the purpose of the clause was to ensure that persons engaged as apprentices prior to the commencement of the award on 1 January 2010 would still be covered by the terms of the modern award. Given that the modern award has been in place now for over 6 years, it is most likely that the apprentices affected by this clause (i.e. apprentices engaged prior to the commencement of the modern award) have finalised their apprenticeship agreements, either by completion or cancellation. That being the case, we are not opposed to clause 13.16 being removed from the Exposure Draft.

10.3 Clause 20.6(a): In response to the Commission's query, clause 22.3(m) of the current Award provides that a tradesperson who is the holder of a scaffolding certificate or rigging certificate issued by the appropriate certifying authority and who is required to

act on that certificate whilst engaged on work requiring a certificated person must be paid an additional 3.2% of the hourly *standard rate* per hour. On that basis, the scaffolding allowance should be specified as being a percentage of the standard rate.

10.4 Clause 24.5: This clause sets out the overtime and public holiday rates that are payable to shiftworkers. However, the clause does not state whether the overtime/public holiday rates are payable in lieu of the shift rates prescribed in clause 24.4 of the Exposure Draft. We submit that this drafting could create a degree of uncertainty as to whether both rates apply concurrently. Accordingly, to avoid doubt, we submit that a new clause 24.5(c) should be inserted into the Exposure Draft in the following terms:

(c) The overtime and public holiday rates specified in this clause will be paid instead of the shift rates specified in clause 24.4 of the award.

11. MOBILE CRANE HIRING AWARD 2010

11.1 Clause 7.2: There is a number of incorrect references in the table which should be amended. Furthermore, there are additional facilitative provisions contained in the Exposure Draft which are not referenced in the table in clause 7.2. For example:

(a) The table states that the application of clause 9.7(g) (casual conversion to full-time) can be altered with the agreement of the majority of employees. However, clause 9.7(g) actually states that the application of the clause can be altered by *"agreement between the employer and the majority of the employees in the relevant workplace or a section or sections of it, or with the casual employee concerned"*. That being the case, we submit that the third column of the table in clause 7.2 should read, *"The majority of employees or the individual casual employee"*.

(b) The table states that with the agreement of the majority of employees, an employer can introduce time off in lieu of payment for overtime. This facilitative provision is stated to apply for clause 21.11. However, the Exposure Draft does not contain a clause 21.11. The proper reference in the table should be clause 21.9(a).

(c) Clause 12.5 states that the ordinary hours of work will not exceed 10 hour on any day provided that the arrangement of ordinary working hours in excess of eight hours in one day will be with the agreement of the majority of employees involved. This clause is not currently referenced in the table as being a facilitative provision. Accordingly, we submit that the following line should be inserted into the table:

Clause	Provision	Agreement between and employer and:
12.5	Ordinary hours in excess of 8 hours in any one day	The majority of employees

(d) Clause 15.2 states that where agreement is reached between the employer and the employee to vary the application of the meal break specified in clause 15.2 of the Exposure Draft, the employer will not be required to make payment in excess of 10 minutes. This clause is not currently referenced in the table as being a

facilitative provision. Accordingly, we submit that the following line should be inserted into the table:

Clause	Provision	Agreement between and employer and:
15.2	Variation to meal break during overtime	The individual employee

(e) Clause 23.4(a)(vi) states that where the majority of employees in the depot or section agree, the employer may close down the depot for two or three separate periods in accordance with the subclause. This clause is not currently referenced in the table as being a facilitative provision. Accordingly, we submit that the following line should be inserted into the table:

Clause	Provision	Agreement between and employer and:
23.4(a)(vi)	Two or three separate shutdown periods	The majority of employees

(f) Clause 23.5(b) states that the granting and taking of annual leave for a part close-down and part rostered leave will be subject to the agreement of the employer and the majority of employees in the depot, or a section thereof. This clause is not currently referenced in the table as being a facilitative provision. Accordingly, we submit that the following line should be inserted into the table:

Clause	Provision	Agreement between and employer and:
23.5(b)	Granting and taking annual leave for part close-down and part rostered leave	The majority of employees

11.2 Clause 9.2: The reference to paid parental leave in this clause should be removed as the Award does not provide any entitlement to paid parental leave. While the Exposure Draft provides for parental leave entitlements as per the NES, we note that the NES does not provide paid parental leave. Further, casual employees are eligible to take unpaid parental leave under the NES, provided that at they have worked for their employer for 12 months on a regular and systematic basis and they have a reasonable expectation of continuing work with the employer on a regular and systematic basis, but for the birth or adoption of their child.

11.3 Clause 23.3(b)(ii): This clause sets out the circumstances in which an employee should be paid shift loadings during a period of annual leave instead of the 17.5% annual leave loading prescribed by clause 23.3(b)(i) of the Exposure Draft. The current wording of clause 23.3(b)(ii), in particular the use of the term "loading" without qualifying whether it is "shift loading" or "annual leave loading", may lead to some confusion as to how the clause is applied. Accordingly, we submit that clause 23.3(b)(ii) should be amended as follows:

> "Where the employee would have received shift loadings prescribed by clause 22 Shiftwork, had they not been on leave and the <u>shift</u> loadings would be of a

greater amount than 17.5%, then the shift loadings ~~it~~ will apply to the relevant weekly wage rate instead of the annual leave loading of 17.5%."

11.4 Clause 15.2: This clause outlines an employee's entitlement to a meal break during overtime. The Commission has asked parties to consider whether the meal breaks specified in clause 15.2(c) and 15.2(e) are paid breaks. Clause 15.2(a) of the Exposure Draft states that employees who work a period of overtime more than 1.5 hours after working ordinary hours, must be allowed a 20 minute **paid** meal break. In particular, the clause clarifies that the meal break is paid by using the following words, *"…which will be paid for at their ordinary hourly rate"*. These clarifying words are not used in clauses 15.2(c) and 15.2(c) when specifying the meal break to be taken by employees. In the absence of this reference, we submit that the breaks specified in clauses 15.2(c) and 15.2(e) are unpaid breaks.

11.5 Clause 17.3(a): This clause sets out an employee's entitlement to subsidised footwear and clothing items. The Commission has sought the parties views on whether clause 17.3(a)(iv) applies to clauses 17.3(a)(ii), 17.3(a)(iii) and 17.3(a)(v). Clause 17.3(a)(iv) states that an employee will be eligible for "the subsidy" after one month qualifying service with the employer. The use of the word "subsidy" (in the singular) creates a degree of confusion because clauses 17.3(a)(ii) and 17.3(a)(v) create an entitlement to "subsidies" (in the plural), namely:

(a) clause 17.3(a)(ii) provides that the employer will subsidise the cost of safety footwear in the amount of $62.27; and

(b) clause 17.3(a)(v) provides that the employer will subsidise the cost of a Tasman Blue Jacket in the amount of $62.27.

11.6 Given that the purpose of clause is to provide an entitlement to subsidised footwear and clothing items, we submit that clause 17.3(a)(iv) is intended to apply to clauses 17.3(a)(ii), 17.3(a)(iii) and 17.3(a)(v). In our view, the clause itself would not make sense if the requirement to work a one month qualifying period applied to the footwear subsidy, but not the jacket subsidy, and vice verse.

11.7 To remove this confusion from the Exposure Draft, we submit that clause 17.3 should be amended as follows:

"17.3 Expense related allowances

(a) Protective clothing and equipment

(i) Where an employee is required to work in a place where in the absence of protective clothing or footwear, the employees' clothing or footwear will become wet, the employee will provide waterproof clothing, safety helmet and footwear, as necessary, and be reimbursed by the employer for the cost of the clothing and protective equipment. Alternatively the employer may provide the clothing and protective equipment.

(ii) The purchase of safety footwear will be subsidised by the employer and will be replaced when required due to wear, loss or

damage. On each occasion that an employee obtains safety footwear, the employer will subsidise the cost of such footwear to an amount of $62.27.

(iii) The employee will purchase the approved type safety footwear and will present the receipt in order to obtain the subsidies specified in this clause ~~subsidy~~.

(iv) All employees will be eligible for the subsidies specified in this clause ~~subsidy~~ after one month qualifying service with the employer.

(v) The purchase of a Tasmanian Bluey Jacket will be subsidised by the

employer and will be replaced when required due to wear, loss or

damage. On each occasion the employer will subsidise the cost of such jacket to an amount of $62.27."

11.8 Clause 22.9: This clause states that all work outside the ordinary hours of shiftwork will be paid 200% of the ordinary hourly rate. The Commission has asked parties to clarify whether clause 22.9 applies Monday to Friday as the clause is inconsistent with clauses 22.6 and 12.1 of the Exposure Draft. In our view, clause 22.9 intends to cover work done outside ordinary hours that is **not** completed on a Saturday, Sunday or Public Holiday because clauses 22.6 (Saturday penalties for shiftwork), 22.7 (Sunday penalties for shiftwork) and 22.8 (Public holiday penalties for shiftwork) already provide the relevant penalties payable for work completed during these particular times which are outside ordinary hours. For example:

(a) Clause 12.1 states that the ordinary hours of work will be 38 hours per week, Monday to Friday, worked continuously at the discretion of the employer, between 6.00am and 6.00pm, except for meal breaks, arranged in accordance with clause 15. As result, this clause suggests that any work completed outside of ordinary hours (e.g. on a Saturday, Sunday or Public Holiday) would be overtime and in the case of shiftworkers, paid at the rate of 200% of the ordinary hourly rate as per clause 22.9; and

(b) Clause 22.6 states that all time worked on a Saturday as shiftwork must be paid in accordance with the overtime rate specified in the clause. These rates compensate the employee for working "outside of ordinary hours". This clause understandably causes a degree of confusion when read in conjunction with clause 22.9 because clause 22.9 purports to cover **all** work performed outside the ordinary hours.

As a result, clause 22.9 applies in respect of any work outside ordinary hours, Monday to Friday. This interpretation is consistent with the payment of overtime in respect of day workers in clause 21.3 of the Exposure Draft.

11.9 To avoid any ambiguity concerning the application of this clause, we submit that clauses 22.6 to 22.9 of the current Exposure Draft should be deleted and replaced with the following new clause 22.6:

22.6 All time worked outside the ordinary hours of work will be overtime and paid at:

For overtime worked on:	***Overtime rate % of ordinary hourly rate***
Monday to Friday	200
Saturday - first two hours	150
Saturday - after two hours	200
Saturday - for all time worked after 12noon	200
Sunday - all time worked	200
Public holidays - all time worked	250

12. PLUMBING AND FIRE SPRINKLERS AWARD 2010

12.1 Clause 7.2: There are additional facilitative provisions contained in the Exposure Draft which are not referenced in the table in clause 7.2. Set out below are our submissions in respect of these matters:

(a) Clause 15.5(c) provides that an employer with fewer than 15 employees can, subject to an agreement in writing between the employer and the employee, pay the employee overtime for any hours worked over 38 hours in any week, instead of accruing an RDO. This clause is not currently referenced in the table in clause 7.2 as being a facilitative provision. Accordingly, we submit that the following line should be inserted into the table:

Clause	**Provision**	**Agreement between and employer and:**
15.5(c)	Overtime instead of RDO for employer with fewer than 15 employees	The individual employee

(b) Clause 15.5(e) states that the RDO for employees not working alongside other building and construction workers will be as nominated by the employer, unless agreement is reached between the employer and its employees for an alternate day to be the RDO in the four week cycle. This clause is not currently referenced in the table in clause 7.2 as being a facilitative provision. Accordingly, we submit that the following line should be inserted into the table:

Clause	**Provision**	**Agreement between and employer and:**
15.5(e)	Alternate RDO for employees not working alongside other building and construction workers	The employees

(c) Clause 15.5(f) states that the RDO for employees working alongside other building and construction workers will be the fourth Monday in the cycle, unless an alternative day in the four week cycle is agreed in writing between the employer and its employees. This clause is not currently referenced in the table in clause 7.2 as being a facilitative provision. Accordingly, we submit that the following line should be inserted into the table:

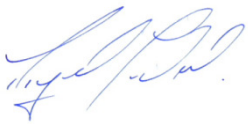
Clause	**Provision**	**Agreement between and employer and:**
15.5(f)	Alternate RDO for employees working alongside other building and construction workers	The employees

12.2 Clause 15.3: This clause in the Exposure Draft states that agreement can be reached by the employer and its employees to start work early. The Commission has asked the parties to consider whether clause 15.3 should specify "a majority of employees". Based on the current drafting of clause 15.3, we submit that it is unclear whether the reference to "employees" is a reference to "a majority of employees". However, given that clause 15.3 refers to "employees" in the plural, it is reasonable to assume that the clause was meant to apply in respect of "a majority of employees", as opposed to an agreement reached between an employer and "an individual employee". Furthermore, the application of clause 15.3 to "a majority of employees" would be consistent with the facilitative provision contained in clause 15.4 of the Exposure Draft (alternate methods of arranging ordinary hours and RDOs) which applies in respect of agreement reached between "an employer and the majority of its employees".

12.3 Clauses 16.5 and 16.6: In response to the Commission's query, we submit that in order to make the award more user-friendly, it is appropriate that clauses 16.5 and 16.6 are placed within the same clause. Given that clause 16 of the Exposure Draft generally deals with breaks under the award, it would appear to be the most appropriate place to put the clauses. However, we would not be opposed to these clauses being placed in the overtime clause of the Exposure Draft, provided that both clauses are kept together.

12.4 Clause 18.8: In response to the Commission's query, we note that clause 18.8(a) states that wages, allowances and other monies must be paid in **cash** or by **cheque**, **bank cheque**, **bank or similar transfer**, or **any combination of these**. We submit that a "bank or similar transfer" allows for the payment of wages by electronic means. However, to ensure that there is no ambiguity concerning electronic transfer being an acceptable method of paying wages, clause 18.8(a) could be amended to include an express reference to payment by electronic means.

12.5 Clause 20.3(f): In response to the Commission's query, given the clause specifies that the allowance is payable to "**adult** fire sprinkler fitter employees" as opposed to "fire sprinkler fitter employees" generally, the allowance is clearly only payable to adults, and this clearly reflects the provision at 21.1(g) of the current award.



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

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