



Fair Work Commission: 4 yearly review of modern awards

SUBMISSION: GROUP 3 AWARDS

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

19 APRIL 2018

BACKGROUND

1. On 13 March 2018, the Fair Work Commission (the **Commission**) published a decision relating to a number of Group 3 awards as part of the 4 yearly review of modern awards (the **March Decision**).¹
2. Arising from the March Decision, interested parties were given an opportunity to make submissions on a range of award-specific issues.
3. In this submission, we make submissions in respect of certain issues that were raised in the March Decision in respect of the following awards:
 - (a) the Educational Services (Post-Secondary Education) Award;
 - (b) the Horticulture Award; and
 - (c) the Sugar Industry Award.
4. This submission is 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*.
5. ABI and NSWBC appreciate the opportunity to provide this submission.

EDUCATIONAL SERVICES (POST-SECONDARY EDUCATION) AWARD

6. Item 16: we agree with the Commission's provisional view that the exposure draft be amended in the manner proposed by the NTEU.

HORTICULTURE AWARD

7. Item 50 - Definition of 'ordinary hourly rate': we agree with the change proposed by Ai Group to the definition of ordinary hourly rate.

SUGAR INDUSTRY AWARD

8. Item 21 - Overtime and penalty rates: the Commission has directed parties to file submissions addressing six questions put by the Commission at paragraph [199] of the March Decision. Our submissions in response to those six questions are set out below.

¹ [2018] FWCFB 1405.

9. In response to the question at the first dot point at paragraph [199] of the March Decision, our view is that there are no interaction issues between the proposed clause 26.4 (as set out at paragraph [198] of the March Decision) and clause 26.3(b) of the Exposure Draft for work on weekends which is considered to be within 'ordinary hours of work'. The proposed clause 26.4 provides for loadings to be paid where sugar mill employees and bulk terminal employees work hours which fall between midnight on Friday and midnight on Sunday. Clause 26.3(b) of the Exposure Draft, establishes the ordinary hours of work for continuous shift workers.
10. In response to the questions at the second and third dot points at paragraph [199] of the March Decision, we submit that there would be an extra payment for sugar milling employees (as per proposed clause 26.4(a)) who are continuous shift workers working ordinary hours, as the penalty payable for ordinary hours worked between midnight Friday and midnight Sunday is expressed to be *in addition to* any allowance payable for the working of an afternoon or night shift. Accordingly, the afternoon and night allowances in clause 26.5 of the Exposure Draft would also apply to sugar milling employees.
11. However, in respect of bulk terminal employees (as per proposed clause 26.4(b)) who are continuous shift workers working ordinary hours, it is not apparent that they are entitled to receive both the afternoon and night allowances in clause 26.5 of the Exposure Draft *and* the extra weekend loading set out in the proposed clause 26.4(b). The phrase, which appears in proposed clause 26.4(a), namely, "*[s]uch payments will be in addition to any allowance payable for the working of an afternoon or night shift*", does not appear in the proposed clause 26.4(b). On an ordinary reading of this clause and in the absence of a similar provision to that which is clearly expressed in proposed clause 26.4(a), we submit that the bulk terminal employees would not be entitled to receive the afternoon and night allowances in clause 26.5 of the Exposure Draft.
12. In response to the question at the fourth dot point at paragraph [199] of the March Decision, we refer to paragraph 11 of the Submissions of the AWU dated 16 April 2018, and agree with the submission put by the AWU in answer to this question.
13. In response to the question at the fifth dot point at paragraph [199] of the March Decision, we submit that the proposed 'minimum hourly rate' is that of a permanent employee. In this regard we note the definition of this term in the Definitions at clause 2

of the Exposure Draft, that is, “**minimum hourly rate** means the award minimum weekly wage divided by 38”.

14. In response to the question at the sixth dot point at paragraph [199] of the March Decision, we once again refer to, and agree with, the Submissions of the AWU dated 16 April 2018. At paragraph 13 of those submissions, the AWU notes that the difference between the entitlements for sugar milling employees and bulk terminal employees reflects the existing situation in the two relevant pre-modern awards:

- (a) *Sugar Milling Industry Award - State 2005* (AN140283); and
- (b) *Bulk Terminals Award - State 2003* (AN140048).

15. Each of these pre-modern awards provide for different entitlements for shift workers working ordinary hours on weekends.

16. The *Sugar Milling Industry Award - State 2005* states at clause 6.2.4:

Where continuous shift work is regularly performed, on a 3 shifts per day basis, worked over a period of 7 days per week, one and a-half times the ordinary rate shall be paid for all time worked up to 8 hours in any shift between midnight Friday and midnight Sunday. Such payments shall be in addition to any allowance payable for the working of an afternoon or night shift.

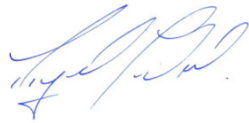
17. Clause 26.4 of the Exposure Draft and the proposed clause 26.4(a) are expressed in virtually identical terms as in the pre-modern *Sugar Milling Industry Award*.

18. The *Bulk Terminals Award - State 2003* provides at clause 6.5.2:

- (a) *An employee who works on a continuous process (ie. where the process continues over 24 hours of each of 7 days a week) shall be paid for ordinary hours worked on weekends as follows:*
 - (i) *midnight Friday to midnight Saturday - one and a half (1 1/2) times the aggregate ordinary time rate; and*
 - (ii) *midnight Saturday to midnight Sunday - double (2) the aggregate ordinary time rate.*

19. The proposed clause 26.4(b) is expressed in virtually identical terms as in the pre-modern *Bulk Terminals Award*.

20. Accordingly, we agree with the AWU's submissions that the reason why bulk sugar terminals shift workers do not have equivalent entitlements as sugar milling shift workers, is because this reflects the historical award provisions that applied to each of these distinct areas of operation within the sugar industry.



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

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