



Fair Work Commission: 4 yearly review of modern awards

SUBMISSIONS: GROUP 1 AWARDS

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

7 JULY 2017

BACKGROUND

1. These submissions relate to the Exposure Drafts for the majority of the Group 1 Awards.
2. In the Decision issued on 9 June 2017, the Fair Work Commission (**Commission**) directed interested parties to provide comments in writing outlining:
 - (a) any errors in the revised exposure drafts or summaries of submissions for Group 1 Awards; and
 - (b) any outstanding issues in the summaries of submissions that they wish to press for Group 1 Awards.
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*.
4. ABI and NSWBC each has a material interest in the following Group 1 Awards:
 - (a) Asphalt Industry Award 2010;
 - (b) Black Coal Mining Industry Award 2010;
 - (c) Cement and Lime Award 2010;
 - (d) Cleaning Services Award 2010;
 - (e) Concrete Products Award 2010;
 - (f) Cotton Ginning Award 2010;
 - (g) Manufacturing and Associated Industries and Occupations Award 2010;
 - (h) Meat Industry Award 2010;
 - (i) Mining Industry Award 2010;
 - (j) Pharmaceutical Industry Award 2010;
 - (k) Poultry Processing Award 2010;
 - (l) Premixed Concrete Award 2010;
 - (m) Quarrying Award 2010;
 - (n) Salt Industry Award 2010;
 - (o) Security Services Industry Award 2010;
 - (p) Textile, Clothing, Footwear and Associated Industries Award 2010;
 - (q) Timber Industry Award 2010; and
 - (r) Vehicle Manufacturing, Repair, Services and Retail Award 2010.
5. ABI and NSWBC appreciate the opportunity to provide the following submissions on the Group 1 Award Exposure Drafts.

ASPHALT INDUSTRY AWARD

6. ABI and NSWBC do not have any submissions in respect of the Exposure Draft.

BLACK COAL MINING INDUSTRY AWARD

7. Our clients have no outstanding technical and drafting claims in relation to this Award. However, we make the following observations and submissions in relation the Exposure Draft and other parties' submissions.
8. Clause 18 of the existing Award, dealing with accident pay, has been reinserted as clause 10A of the Award. This is a matter which has been referred to the Full Bench dealing with transitional issues (AM2014/190) and our clients reserve the right to make further submission with respect to this issue at the appropriate time.
9. With respect to items 5 and 21 of the Summary of Submissions dated 13 June 2017, our clients reserve the right to make further submissions.

CLEANING SERVICES AWARD

10. ABI and NSWBC seek the following amendments to be made to the Exposure Draft:
 - (a) Clause 8.2(a) - Ordinary hours and roster cycles - part-time and casual employees: The word "the" is unnecessary and can be deleted to make the sentence read, "Subject to the clause 9.3 ..."
 - (b) Clause 13.3 - Example 1 - Shiftwork and weekend work (part-time employee): Amend wording in "Step 3" to be "minimum hourly rate (100%)".
 - (c) Schedule G - Definitions: The additional definition for 'cleaning area' is unnecessary as there is already an identical definition for 'total cleaning area'. Given that the term 'total cleaning area' is the one used throughout the award we submit that the definition for 'cleaning area' should be deleted.
11. ABI and NSWBC also support the submission of AI Group¹ in relation to the following outstanding amendments:
 - (a) Clause 1.5 – Title and commencement: Consistent with the Commission's earlier decision regarding the absorption clause², clause 1.5 should be deleted.
 - (b) Clause 6.4(b) - Part-time employees: Consistent with the Commission's earlier decision that penalties and loadings contained in the awards are to be applied to the minimum rate prescribed by an award (to the exclusion of over-award payments)³, clause 6.4(b) should be varied by inserting "minimum hourly rate" after "15%".
 - (c) Clause 15.2(b) – Definition of shiftworkers: It appears to us that clause 15.2(b) is inconsistent with s.87(2) of the NES and should therefore be deleted.

¹ Australian Industry Group Submission - Group 1A -1B Revised Exposure Drafts

² [2015] FWCFB 4658 at [9] – [20] and [2015] FWCFB 6656 at [74]; AI Group Submission dated 23 September 2016

³ [2014] FWCFB 9412 at [44] – [53] and [2015] FWCFB 4658 at [47].

- (d) Clauses 15.6 and 15.7 – Payment for annual leave: As requested by AI Group, we similarly seek an opportunity to discuss and develop the precise wording for these clauses having regard to the in-principle agreement reached between the parties as identified by Commissioner Cribb’s report of 7 May 2015.

CONCRETE PRODUCTS AWARD

12. Schedule B.2.2 contains a note which includes a source code error referencing “clause 0”. This needs to be rectified. In any event, the reference to “See query in relation to...” is ambiguous. ABI and NSWBC submit that this reference should be clarified.

COTTON GINNING AWARD

13. ABI and NSWBC’s submission of 6 March 2015 sought to remove clause 11.2(f) as it is a district allowance. This request remains outstanding. In addition, Schedule B will need to remove the reference to ‘special contingency payment’. We note that this issue has been referred to the Full Bench dealing with transitional issues (AM2014/190).

MANUFACTURING AND ASSOCIATED INDUSTRIES AND OCCUPATIONS AWARD

14. Our clients note that the agreed changes (as they appear in Schedule B of decision [2017] FWCFB 3177) have been accurately reflected in the Exposure Draft.

MEAT INDUSTRY AWARD

15. Our clients have no outstanding technical and drafting claims in relation to this Award. However, we make the following submissions in relation the Exposure Draft and other parties’ submissions.
16. Our clients submit that the amendment to clause 6.8(k) as proposed by the AMIC (Item 8 of the Summary of Submissions published on 13 June 2017) is not necessary, and that it is sufficiently clear that this clause relates only to work performed by casual employees on the weekend.

MINING INDUSTRY AWARD

17. Our clients have no outstanding technical and drafting claims in relation to this Award. However, we make the following submissions in relation the Exposure Draft and other parties’ submissions.
18. The Exposure Draft released on 13 June 2017 contains the following typographic errors:
- (a) Clause 2.1 - the word “and” should be deleted after the words “National Employment Standards (NES)”;
 - (b) Clause 11 - the reference to Schedule A should be to Schedule C; and
 - (c) Schedule C.1 - the reference to Schedule G should be to Schedule H.
19. Our clients also maintain their support the submission of the Ai Group dated 24 October 2014 in relation to clause 13.2 of the Exposure Draft. The use of the term “ordinary rate of pay” in this clause is a substantive variation to the existing Award clauses dealing with the same subject matter (clauses 20.5 to 20.7) which require the relevant penalty rates to be applied to the base rate of pay - that is, exclusive of any payments which might be captured by an all purpose allowance.

PHARMACEUTICAL INDUSTRY AWARD

20. Our clients have no outstanding technical and drafting claims in relation to this Award. However, we make the following observations and submissions in relation the Exposure Draft and other parties' submissions.
21. The Exposure Draft released on 13 June 2017 contains the following typographic errors;
- (a) Clause 10.3 - there is an incorrect reference to Schedule C - Supported Wage System. The correct reference should be to Schedule D.
 - (b) Clause 22.1(b) - there is an incorrect reference to clause 21.1(a). The correct reference should be to clause 22.1(a).
22. Our clients continue to press their opposition to the submission of the AMWU on 23 November 2015 proposing an amendment to clause 6.3(c) and 8.2(c) to include a reference to clause 22.2 (Consultation about changes to rosters or hours of work) on the basis of a purported ambiguity relating to the interaction of these two clause (Item 4 of the Summary of Submissions published 13 June 2017). Our clients maintain that there is no ambiguity, and as such the proposed amendment is unnecessary.

POULTRY PROCESSING AWARD

23. ABI and NSWBC concur with Business SA, AFEI and Ai Group⁴ that the Exposure Draft should contain a provision that states that 'each day stands alone' for the purposes of calculating overtime rates. We recommend inserting these words into clause 14.1 and note that this issue has been identified by the Commission in the body of the exposure draft but remains outstanding.

PREMIXED CONCRETE AWARD

24. A reference source error needs to be corrected in clause 15.5.
25. The notes included at Schedule A states:
- Ordinary hourly rate includes the industry allowance payable to all employees for all purposes. Any additional all purpose allowances applicable need to be added to these rates.*
26. In the submission of ABI and NSWBC, the 'industry allowance' should be varied to 'industry disability allowance' to reflect the substantive terms of the Award. Further, the second sentence of this note does not assist. The note should be clarified to state:
- In the event that other all purpose allowances (the leading hand allowance (clause 11.2(c)) or first aid allowance (clause 11.2(d))) are applicable, these should be added to the above rates.*

⁴ paragraph 302 of Ai Group submission dated 20 November 2015.

QUARRYING, CEMENT AND LIME AWARD

27. Clause 11.2 should be amended to remove the typographical error “allowanced”.
28. Clause 15.3 contains a reference error. The error reference should be replaced by clause 15.2.
29. The note included at Schedule A states:

Ordinary hourly rate includes the industry allowance payable to all employees for all purposes. Any additional all purpose allowances applicable need to be added to these rates.

30. In the submission of ABI and NSWBC, the ‘industry allowance’ should be varied to ‘industry disability allowance’ to reflect the substantive terms of the Award. Further, the second sentence of this note does not assist. The note should be clarified to state:

In the event that other all purpose allowances (the leading hand allowance (clause 11.2(c)) or first aid allowance (clause 11.2(d)) are applicable, these should be added to the above rates.

SALT INDUSTRY AWARD

31. The issue regarding the word ‘loadings’ at clause 14.4(b) appears to be outstanding. Our position is consistent with Ai Group in that the word ‘loadings’ should not be deleted as casuals are not entitled to casual loading on overtime under this award.

SECURITY SERVICES INDUSTRY AWARD

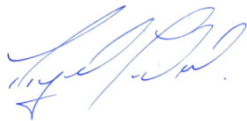
32. The following matters from our previous submissions dated 6 March 2015 remain outstanding and we seek for them to be reflected in the Exposure Draft:
 - (a) Clause 3.3: The existing clause 4.3 of the Award should be retained in favour of clause 3.3 of the Exposure Draft, which potentially widens the scope of the Award. This issue can now be addressed by the Commission as the substantive claims (seeking to vary the coverage provisions of the Award) have been decided. The decision found that: “It has not been established that the proposed variation to the coverage clause (clause 4.1) is necessary to achieve the modern awards objective.” In light of this, we again, submit that the change to the existing clause 4.3 potentially widens the scope of the Award and is also not necessary to achieve the modern awards objective.
 - (b) Clause 8.1(b)(i): The reference in this clause should be to clause 9.1(b) rather than to 8.1(b).
 - (c) Clause 9.3(b): The clause should state ‘Subject to clause 9.3(c), where an employee...’. The word ‘where’ should be reinserted into the clause along with a comma.

TEXTILE, CLOTHING, FOOTWEAR AND ASSOCIATED INDUSTRIES AWARD

33. In light of the casual and part-time employment Full Bench decision [2017] FWCFB 3541, clause 6.5 will not require amendment as the decision determined that awards with existing casual conversion provisions will be unaffected.
34. Our clients support Ai Group's submission at paragraph 44 of their submission regarding general issues arising from Exposure Drafts dated 31 August 2016. The submission relates to inconsistencies in the expression of shift penalties, loadings and allowances.
35. We otherwise confirm that the summary of submissions on revised Exposure Draft is an accurate reflection of our clients' position and the issues outstanding between the parties.

TIMBER INDUSTRY AWARD

36. Our clients support the submission of Ai Group in relation to Item 11 of the summary of submissions. We recommend the inconsistency in 'shift allowances' and 'shift premiums' be rectified for consistency and note this issue is outstanding.
37. Otherwise, our clients do not have any outstanding issues in the summary of submissions that they wish to press. However, our client reserves its right to reply to any submissions on Items 2, 5 and 8 from the summary of submissions table should these items be pressed by their respective applicants.



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

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