
Fair Work Commission: 4 yearly Review of modern awards

SUBMISSION IN REPLY

**4 YEARLY REVIEW OF MODERN AWARDS: NURSES AWARD
(AM2016/31)**

**AUSTRALIAN BUSINESS INDUSTRIAL
- and -
THE NSW BUSINESS CHAMBER LTD**

19 DECEMBER 2018

1. INTRODUCTION

- 1.1 This submission in reply is made on behalf of Australian Business Industrial (**ABI**) and the New South Wales Business Chamber Ltd (**NSWBC**) in accordance with the Decision of the Fair Work Commission (the **Commission**) dated 3 December 2018 in respect of the *Nurses Award 2010* (the **Award**).
- 1.2 ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) and has some 4,200 members.
- 1.3 NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009* (Cth) with more than 19,000 members.
- 1.4 Our clients previously filed submissions in this matter dated 23 May 2017 and 20 March 2018.
- 1.5 This submission in reply is confined to the material filed:
- (a) the Australian Industry Group (**Ai Group**);
 - (b) the Private Health Industry Employers' Association (**PHIEA**); and
 - (c) the Australian Nurses & Midwives Federation (**ANMF**).

2. THE AUSTRALIAN INDUSTRY GROUP

- 2.1 Our clients support the amendments proposed in the draft determinations filed by the Ai Group dated 6 December 2018.

3. THE PRIVATE HEALTH INDUSTRY EMPLOYERS' ASSOCIATION

- 3.1 Our clients have reviewed the submission of the PHIEA filed 7 December 2018 and respond as follows.

Proposed clause 28.5 - Recall to work when on call and clause 28.6 - Recall to work when not on call

- 3.2 Our clients support the submissions of the PHIEA to the extent they have identified a lack of clarity as to the definition of the "work" that is required to be performed by an employee to become entitled to payment under the proposed clauses 28.5(b) and 28.6(b).
- 3.3 For example, it does not appear to be intended that an employee who elects to check and respond to emails (rather than being required to do so), or who answers a call relating to rostering or other administrative matters, should be entitled to payment of a minimum of one hour at overtime rates. This is especially the case under clause 28.6, where an employee is not rostered to be on call and is not holding themselves in readiness to return to work.

- 3.4 Our clients support amendment to the proposed draft clauses to clarify that the “work” must be constituted by the requirement to provide “clinical advice” or “other managerial functions” (or other such appropriate examples), to avert the situation where the entitlement is triggered by basic enquiries being made of the employee, of the kind most employees may expect to receive from time to time.
- 3.5 Clause 21.4 - free from duty and on call
- 3.6 Our clients support the amendment proposed at [14] of the PHIEA submission to clause 21.4 permitting employees to agree to be rostered on-call on their allocated days off.
- 3.7 Clause 27.1(c)
- 3.8 Our clients support the amendment proposed at [15] of the PHEIA submission to clause 27.1(c).
- 4. THE AUSTRALIAN NURSING & MIDWIFERY FEDERATION**
- 4.1 Our clients do not oppose the ANMF’s proposed amendment to clauses 28.5 and 28.6 to clarify that “electronic communication” includes telephone calls.
- 4.2 In respect of the revised clause 27.1, our clients support the insertion of the words “is taken” (an amendment also proposed by the PHIEA), as suggested by the ANMF.
- 5. CONCLUSION**
- 5.1 Should you require any further information, please contact Kate Thomson on 02 4989 1003.

AUSTRALIAN BUSINESS LAWYERS & ADVISORS

On behalf of Australian Business Industrial and the New South Wales Business Chamber Ltd

19 December 2018

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