

On 19 Nov 2020, at 3:55 pm, Jordan Lombardelli <[Jordan.Lombardelli@ablawyers.com.au](mailto:Jordan.Lombardelli@ablawyers.com.au)> wrote:

Dear Associate,

We refer to the abovementioned matter in which we act on behalf of the New South Wales Business Chamber (**NSWBC**) and the Australian Business Industrial (**ABI**).

In accordance with PN 108 – PN 109 of the transcript from the hearing on 18 November 2020, please find **attached** the note addressing the SDA's analysis of the Fair Work Commissions Information Note dated 5 November 2020, in both word and PDF format.

Kind Regards,

Jordan

**Jordan Lombardelli**

Associate

Australian Business Lawyers & Advisors

**Fair Work Commission: 4 yearly review of modern awards**

**AM2017/60 - 4 YEARLY REVIEW OF MODERN  
AWARDS - GENERAL RETAIL AWARD 2020**

**NOTE FOLLOWING ORAL HEARING ON 18 NOVEMBER  
2020**

**AUSTRALIAN BUSINESS INDUSTRIAL**

**AND-**

**THE NSW BUSINESS CHAMBER LTD**

**19 NOVEMBER 2020**

## 1. BACKGROUND

1.1 During the hearing on 18 November 2020, the Fair Work Commission (**the Commission**) granted ABI and NSWBC until 4:00pm, 19 November 2020 the opportunity to respond to question 8 of the information note issued by the Commission on 18 November 2020.

1.2 ABI/NSWBC appreciate the Commission's accommodation in allowing it to provide a submission concerning the SDA analysis.

## 2. DO THE OTHER PARTIES TAKE ISSUE WITH THE SDA'S ANALYSIS?

2.1 Subject to the corrections made during the hearing on 18 November 2020, ABI/NSWBC does not take issue with the numerical accuracy of the SDA's submission in respect of the number of modern awards falling into the categories described by the SDA.

2.2 We note that the SDA's submission appears to infer that the Commission's Information Note dated 5 November 2020 (**Information Note**) categorisation was somehow deficient in that it included in its Attachment B (the 'without limitation' list) awards which do have junior rates limitations with respect to age.

2.3 By way of observation, the Information Note expressly identified that the 'limitations' relevant to the Information Note were those related to limiting junior rates to a particular classification level or levels, or when employees are performing specific duties.

2.4 This is unsurprising, given the claim in these proceedings is a proposal to limit junior rates to a particular classification level, not to particular ages.

2.5 In that sense, ABI/NSWBC query the relevance of Annexure A of the SDA's Submission which deals with limitations on age.

2.6 To the extent that the Commission is to have regard to the 'figures' contained in the Information Note and the SDA's submission, we submit that the relevant set of figures are included in the Information Note (specifically the approximately 50 modern awards listed in Attachment B).

2.7 This is particularly apparent given the fact that the *General Retail Industry Award 2020 (GRIA)* is not included in the 'bottom line' figure included in the SDA's analysis: i.e. the 14 awards which do not have any relevant restriction or limitation on junior rates (these are listed at Schedule 1 of this document). The GRIA does in fact have some limitations in respect of the application of junior rates to 20 year olds.

2.8 For completeness, and having now had the benefit of being able to more closely review the SDA's analysis, we would also make the following brief summary submissions:

- (a) Consistent with the President's comments at PN108, it is accepted by ABI/NSWBC that there is no uniform application of junior rates across the modern awards system.

- (b) That being said, and consistent with a submission put at hearing at PN115, irrespective of the number of awards in each category, the GRIA is in no way unique in having effectively<sup>1</sup> no classification limitation on junior rates.
- (c) Of the awards identified by the SDA as not having any limitation (see Schedule 1 of this Note), a cursory review suggests that these awards are those where a relatively high proportion of junior employees are engaged and where it would be possible/comparatively common that a junior employee could be engaged at a classification higher than the base or entry level (the most notable examples being *Clerks – Private Sector Award 2020* and *Fast Food Industry Award 2020*).
- (d) Of those awards which are ‘mapped’ to the Retail Trade Industry (11 Awards not including the GRIA - see Table 5 of the Commission’s information note dated 5 November 2020), such awards are on the whole consistent with the GRIA in respect of the lack of limitation of junior rates with the limited exception of:
  - (i) the *Pharmacy Industry Award 2020* (which was the subject of a recent consent variation);
  - (ii) the *Hospitality Industry (General) Award 2020* (a position which appears to be at least in part connected with specific issues around the service of alcohol); and
  - (iii) the *Mannequins and Models Award 2010*.

2.9 Noting the above observations, ABI/NSWBC submit in summary that, in that the SDA analysis and the Information Note undertakes a comparative exercise between junior rates in the GRIA and modern awards generally, this comparison does not support the granting of SDA claim.

**Submission made on behalf of Australian Business Industrial and the NSW Business Chamber Ltd**

**19 November 2020**

---

<sup>1</sup> Noting that a limitation does exist in respect of 20 year olds.

## **Schedule 1**

1. Aboriginal Community Controlled Health Services Award 2020;
2. Airport Employees Award 2020;
3. Animal Care and Veterinary Services Award 2020;
4. Banking, Finance and Insurance Award 2020;
5. Clerks – Private Sector Award 2020;
6. Commercial Sales Award 2020;
7. Fast Food Industry Award 2020;
8. Horse and Greyhound Training Award 2020;
9. Legal Services Award 2020;
10. Local Government Industry Award 2020;
11. Miscellaneous Award 2020;
12. Pharmaceutical Industry Award 2020;
13. Surveying Award 2020;
14. Wool Storage, Sampling and Testing Award 2010.