
Fair Work Commission: 4 yearly review of modern awards

**REPLY SUBMISSIONS: GROUP 3 EXPOSURE
DRAFTS**

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

6 MAY 2016

TABLE OF CONTENTS

TABLE OF CONTENTS	2
1. BACKGROUND.....	3
2. RESPONSE TO THE REPORT TO FULL BENCH OF 2 MAY 2016	4
3. BANKING, FINANCE AND INSURANCE AWARD.....	5
4. BUSINESS EQUIPMENT AWARD.....	5
5. CLERKS - PRIVATE SECTOR AWARD	6
6. COMMERCIAL SALES AWARD	7
7. CONTRACT CALL CENTRES AWARD	7
8. FITNESS INDUSTRY AWARD	8
9. LABOUR MARKET ASSISTANCE INDUSTRY AWARD	8
10. LEGAL SERVICES AWARD	8
11. MISCELLANEOUS AWARD.....	8
12. REAL ESTATE INDUSTRY AWARD	8
13. TELECOMMUNICATIONS SERVICES AWARD.....	9
14. EDUCATIONAL SERVICES (POST-SECONDARY EDUCATION) AWARD	9
15. EDUCATIONAL SERVICES (SCHOOLS) GENERAL STAFF AWARD.....	9
16. GARDENING AND LANDSCAPING SERVICES AWARD.....	9
17. HORTICULTURE AWARD	10
18. NURSERY AWARD	10
19. PASTORAL AWARD	10
20. SUGAR INDUSTRY AWARD.....	11
21. WINE INDUSTRY AWARD	13

1. BACKGROUND

- 1.1 These reply submissions relate to the Exposure Drafts of Group 3 Awards released in December 2015 and January 2016.
- 1.2 In Amended Directions issued on 2 March 2016, the Fair Work Commission (**Commission**) directed interested parties to file comprehensive written submissions on the technical and drafting issues related to the Group 3 Exposure Drafts by 14 April 2016 and reply submissions by 5 May 2016.
- 1.3 These reply submissions are made on behalf of Australian Business Industrial (**ABI**) and the New South Wales Business Chamber Ltd (**NSWBC**).
- 1.4 ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* and has some 4,200 members.
- 1.5 NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009* and has some 18,000 members.
- 1.6 ABI and NSWBC has a material interest in the following Group 3 Awards:
- (a) Banking, Finance and Insurance Award 2010;
 - (b) Business Equipment Award 2010;
 - (c) Clerks - Private Sector Award 2010;
 - (d) Commercial Sales Award 2010;
 - (e) Contract Call Centres Award 2010;
 - (f) Fitness Industry Award 2010;
 - (g) Labour Market Assistance Industry Award 2010;
 - (h) Legal Services Award 2010;
 - (i) Miscellaneous Award 2010;
 - (j) Real Estate Industry 2010;
 - (k) Telecommunications Services Award 2010;
 - (l) Educational Services (Post-Secondary Education) Award 2010;
 - (m) Educational Services (Schools) General Staff Award 2010;
 - (n) Gardening and Landscaping Services Award 2010;
 - (o) Horticulture Award 2010;
 - (p) Nursery Award 2010;
 - (q) Pastoral Award 2010;
 - (r) Sugar Industry Award 2010; and
 - (s) Wine Industry Award 2010.
- 1.7 ABI and NSWBC appreciate the opportunity to provide the following reply submissions on the Group 3 Exposure Drafts.

2. RESPONSE TO THE REPORT TO FULL BENCH OF 2 MAY 2016

2.1 Following conferences conducted by Commissioner Roe on 21 and 29 April 2016, the Commission published a Report to the Full Bench on 2 May 2016 (**Report**) in relation to:

- (a) the Banking, Finance and Insurance Award 2010;
- (b) the Business Equipment Award 2010;
- (c) the Commercial Sales Award 2010;
- (d) the Contract Call Centres Award 2010;
- (e) the Real Estate Industry 2010; and
- (f) the Telecommunications Services Award 2010.

2.2 The Report summarises the discussions that occurred and the progress made during the recent conferences in relation to a range of submissions made by parties in these awards. The Report indicates that:

Unless parties advise otherwise in the reply submissions due 5 May 2016 we proceed on the basis that the only matters outstanding from the submissions received in respect of the exposure drafts are set out below.

2.3 The Report then sets out 'outstanding matters' and 'matters resolved'.

2.4 Our clients' award-specific comments on the Report are contained below in the relevant sections dealing with the specific awards.

2.5 The Report also stated at paragraph [4]b:

The general matters raised in the ABI submission of 15 April 2016 at Section 2.1, 2.2, 2.3, 2.11 and 2.13 noting that some of these submissions seek to change Full Bench decisions. ABI will clarify in their reply submissions if they are pursuing these matters. To the extent that they are they will be referred to the Full Bench.

2.6 Our clients confirm that they intend to pursue the matters contained at paragraphs 2.1, 2.2, 2.3, 2.11 and 2.13 of their submission dated 15 April 2016.

2.7 In our respectful submission, those paragraphs raise 'general' drafting issues that are relevant to a large number of awards and are worthy of consideration¹ of the Full Bench in light of its statutory obligations within the context of the 4 Yearly Review.

2.8 That said, our clients do not intend to run an evidentiary or substantive case in support of these submissions given that the issues raised are of a general technical or drafting nature rather than being claims to alter substantive entitlements.

¹ Or, in the case of the submission at paragraph 2.11, 'reconsideration' by the Full Bench, noting its initial decision in [2015] FWCFB 4658 at [8].

3. BANKING, FINANCE AND INSURANCE AWARD

- 3.1 Clause 6.3(b) and 6.4(c)(i): In response to the submissions of Ai Group, our clients prefer that the Exposure Draft expressly include the minimum hourly rates in the minimum wages table at clause 9.1. We refer to paragraphs 3.4 to 3.6 of our submissions dated 15 April 2016 and the changes made to clause 9.1 of the Revised Exposure Draft.
- 3.2 Clause 6.4(d): Our clients agree with the submissions of Ai Group and Business SA on this matter and note that this issue has been amended in the Revised Exposure Draft.
- 3.3 Clause 9.4: Our clients agree with the submissions of Business SA and AFEI on this matter and note that this issue has been amended in the Revised Exposure Draft.
- 3.4 Clause 11.3(b)(i): Our clients agree with the submissions of Ai Group on this matter and note that this issue has been amended in the Revised Exposure Draft.
- 3.5 Clause 13.6(a): Our clients agree with the submission of Ai Group on this matter and note that this issue has been amended in the Revised Exposure Draft.
- 3.6 Schedule H: Our clients agree with the submission of Ai Group on this matter and repeat and rely on paragraph 3.5 of our submissions dated 15 April 2016.

4. BUSINESS EQUIPMENT AWARD

- 4.1 Clause 2: In response to the ASU submission that the words “whichever makes them more accessible” ought to remain in the clause, we note that the wording of this provision was considered by the Full Bench in its decision of 23 December 2014.² Therefore the wording that is currently in the Exposure Draft should remain.
- 4.2 Clauses 7.8, 11.3(b)(i) and 17.6: In their correspondence of 28 April 2016, the ASU most recently submitted that “country” should be interpreted as “regional”. We are opposed to that submission as it appears to represent a substantive change to the operation of the award. The ASU proposal is also unlikely to provide sufficient clarity to employers and employees alike about when obligations may or may not arise. By way of explanation, the ASU quotes regionalaustralia.org.au, which says “Regional Australia includes all of the towns, small cities and areas that lie beyond the major capital cities (Sydney, Melbourne, Brisbane, Perth, Adelaide and Canberra).” That definition is only one interpretation of “regional Australia” and overlooks places such as the Gold Coast in Queensland and Newcastle in New South Wales, neither of which could sensibly be considered towns or small cities. The ASU submission also overlooks the context of that Institute’s purpose which underlies the definition.
- 4.3 In response to the Report, our clients confirm their intention to pursue their earlier submission made on 15 April 2015, which we repeat here as being “...a definition for 'country employees' could be [defined as] "employees who work in country areas" and 'country areas' could be defined as "those which are predominately rural, pastoral and/or agricultural. Perhaps the most helpful place to define those terms is in Schedule H.”

² [2014] FWCFB 9412 at [26]-[29].

4.4 Clause 16.1: In response to the Report, our clients confirm that they wish to pursue their submission concerning clause 16.1 and the proposed addition of the words “required to” in the context of performing overtime work and payment for same.

4.5 Clause 16.3(d)(iv): The ASU submits that the word “may” in the sentence “An employee on a paid rest break may be entitled to a meal allowance in accordance with clause 11.3(c)” could cause ambiguity and uncertainty. The ASU further submits that the word “is” should be inserted in the place of “may be”. Our clients oppose that submission because clause 11.3(c) alternately speaks of when the entitlement is conferred in subsection (i) and when it is not conferred in subsection (ii). Adopting the ASU’s submission would cause more confusion than the wording as it is currently drafted.

5. CLERKS - PRIVATE SECTOR AWARD

5.1 Clause 5.2: Our clients agree with the submissions of the Ai Group and in that regard refer to paragraph 5.2 of our submission dated 25 April 2016.

5.2 Clauses 6.2(a)(ii) and 6.2(a)(iii): ABI and the NSWBC agree with the Ai Group submission.

5.3 Clause 6.3(d): ABI and the NSWBC agree with the submission of Business SA and in that regard our clients rely upon paragraph 5.3 of their submission dated 15 April 2016.

5.4 Clauses 8.1 and 8.2: ABI and the NSWBC do not oppose Ai Group’s proposed amendments to this clause.

5.5 Clause 8.5(a): ABI and the NSWBC agree with the submissions of Ai Group on this matter.

5.6 Clause 9.1(a): ABI and the NSWBC agree with the submissions of AFEI, Business SA and Ai Group on this matter. In this regard, we refer to paragraph 5.5 of our submission dated 15 April 2016.

5.7 Clause 9.2(c): ABI and the NSWBC agree with the submissions of Ai Group on this matter.

5.8 Clause 10.1: ABI and the NSWBC do not oppose Ai Group’s submissions on this matter. However, we submit that Ai Group’s proposed amendment to the clause is not strictly necessary as the current drafting of the clause does not create ambiguity.

5.9 Clauses 10.3(c) and 10.5: ABI and the NSWBC agree with the submissions of Ai Group on this matter.

5.10 Clause 11.3(a): ABI and the NSWBC do not oppose Ai Group’s submissions on this matter.

5.11 Clause 13.3(a): ABI and the NSWBC do not oppose Ai Group’s submissions on this matter.

5.12 Clause 13.4: ABI and the NSWBC agree with the submissions of Ai Group and Business SA on this matter.

5.13 Clause 14.1: ABI and the NSWBC agree with the submission of Business SA on this matter. In this regard, we repeat and rely upon paragraph 5.8 of our submission dated 15 April 2016.

- 5.14 Clause 14.2: Our clients agree with the submissions of Business SA on this matter. In this regard, we repeat and rely upon paragraph 5.4 of our submission dated 15 April 2016.
- 5.15 Clauses 14.5(b) and 14.5(c): ABI and the NSWBC agree with the submissions of Ai Group on this matter. In this regard, we repeat and rely upon paragraph 5.7 of our submission dated 15 April 2016.
- 5.16 Clause 14.7: ABI and the NSWBC agree with the submissions of Ai Group on this matter.

6. COMMERCIAL SALES AWARD

- 6.1 Our clients do not wish to make any submissions in reply at this stage.

7. CONTRACT CALL CENTRES AWARD

- 7.1 Clause 3.4: ABI and the NSWBC agree with the submissions of AFEI on this matter. This issue has been amended in the Revised Exposure Draft.
- 7.2 Clause 6.3: ABI and the NSWBC agree with the submissions of Ai Group on this matter. This issue has been amended in the Revised Exposure Draft, however the clause still does not state that part-time employees will be paid 1/38th of the weekly rate for each hour worked. This is likely due to the fact that the Revised Exposure Draft contains both weekly and hourly rates of pay. We note that clause 18 of the current Award only contains minimum weekly rates of pay.
- 7.3 Clause 7.1: ABI and the NSWBC agree with the submissions of Ai Group on this matter. The issue has been amended in the Revised Exposure Draft.
- 7.4 Clause 8.7: ABI and the NSWBC agree with the submissions of Ai Group on this matter. In this regard, we repeat and rely upon paragraph 7.3 of our submission dated 15 April 2016.
- 7.5 Clauses 9.1 and 9.2: ABI and the NSWBC agree with the submissions of Ai Group on this matter. The issue has been amended in the Revised Exposure Draft.
- 7.6 Clause 10.6(b): ABI and the NSWBC agree with the change made to this clause in the Revised Exposure Draft. In this regard, we repeat and rely upon paragraph 7.4 of our submission dated 15 April 2016.
- 7.7 Clause 13.1: ABI and the NSWBC agree with the changes made to the table in this clause in the Revised Exposure Draft. In this regard, we repeat and rely upon paragraph 7.5 of our submission dated 15 April 2016.
- 7.8 Clause 13.1(a): ABI and the NSWBC agree with the submissions of Ai Group concerning the clarification sought by the Commission on this clause in the Exposure Draft. In this regard, we repeat and rely upon paragraph 7.6 of our submission dated 15 April 2016.
- 7.9 Clause 14.4(a): ABI and the NSWBC agree with the submissions of Ai Group on this matter. The issue has been amended in the Revised Exposure Draft.
- 7.10 Clause 15.4(a): ABI and the NSWBC agree with the submissions of Ai Group on this matter. The issue has been amended in the Revised Exposure Draft.

- 7.11 Clause 24: ABI and the NSWBC agree with the submissions of Ai Group on this matter. The issue has been amended in the Revised Exposure Draft.

8. FITNESS INDUSTRY AWARD

- 8.1 Clause 7.4(a): Our clients oppose the AWU submission. The Exposure Draft is consistent with section 147 of the *Fair Work Act 2009* (Cth) as it includes terms specifying, or providing for the determination of, the ordinary hours of work for casual employees. Those terms can be found at clauses 7.4(b), 8.1 and 8.2 of the Exposure Draft. Accordingly, the variation proposed by the AWU is unnecessary.
- 8.2 Clause 7.4(c): ABI and the NSWBC do not oppose Aussie Aquatics' proposed amendment to this clause. However, we submit that the amendment is not strictly necessary as the current drafting of the clause does not create any ambiguity.
- 8.3 Clause 8.1 and clause 14.2: ABI and the NSWBC agree with the submissions of Aussie Aquatics on this matter. However, we submit that the proposed amendment to clause 14.2 is not strictly necessary as the current drafting of the clause does not create any ambiguity.
- 8.4 Clause 8.3: ABI and the NSWBC oppose the AWU's proposed amendment to this clause and rely on paragraph 8.2 of our submission dated 15 April 2016. We also agree with the submissions of Business SA and Gymnastics Australia on this matter.
- 8.5 Clause 11.1: ABI and the NSWBC agree with the submissions of Aussie Aquatics on this matter.
- 8.6 Clause 14.3: ABI and the NSWBC oppose the AWU submission. Our clients agree with the submissions of Business SA and Gymnastics Australia on this matter.
- 8.7 Clause 15: Our clients support Gymnastics Australia's proposal to insert an annual close-down clause into the Award.
- 8.8 Schedule A: ABI and the NSWBC do not oppose Aussie Aquatics' proposed amendment to this clause.

9. LABOUR MARKET ASSISTANCE INDUSTRY AWARD

- 9.1 Our clients do not wish to make any submissions in reply at this stage.

10. LEGAL SERVICES AWARD

- 10.1 Our clients do not wish to make any submissions in reply at this stage.

11. MISCELLANEOUS AWARD

- 11.1 Our clients do not wish to make any submissions in reply at this stage.

12. REAL ESTATE INDUSTRY AWARD

- 12.1 Clause 9.2(a): The Real Estate Employers' Federation's (REEF) submissions at 3.2-.3.3 serve to simplify the proposed clause and should be accepted.

12.2 Clause 9.7(c): ABI and NSWBC are content with the proposal outlined by the REEF Submission at 4.1-4.6.

13. TELECOMMUNICATIONS SERVICES AWARD

13.1 Clauses 6.3(b) and 15.1: In response to the Report, ABI and NSWBC confirm that they wish to pursue their submission concerning clauses 6.3(b) and 15.1 and the proposed addition of the words “required to” in the context of performing overtime work and payment for same.

14. EDUCATIONAL SERVICES (POST-SECONDARY EDUCATION) AWARD

14.1 Clause 14.1(c): We support the submission of Business SA on this matter.

14.2 Clause 15.5(d): We support the submissions of Business SA and the AHEIA on this matter. The Award does not contain all purpose rates and as a result such overtime paid out on termination would be paid at the relevant minimum rate.

14.3 Clause 20: We agree with the submissions of the NTEU and AHEIA as the current wording appears to be inconsistent with the NES.

15. EDUCATIONAL SERVICES (SCHOOLS) GENERAL STAFF AWARD

15.1 Clause 10.2 (d)(ii): Our clients support the amendments made to the Exposure Draft by the Association of Independent Schools and the Independent Education Union to clarify that this clause does not apply to casuals.

15.2 Clause 16.3: Our clients agree with the AFEI submission.

16. GARDENING AND LANDSCAPING SERVICES AWARD

16.1 Clause 6.4(c): While the intent of the AWU’s submission seeking to include a reference to the “*ordinary hourly rate of pay for the relevant classification in clause 10*” is understood, this proposal is likely to lead to confusion. Clause 10 does not include a reference to ordinary hourly rates (it refers to Minimum Hourly rates).

16.2 Clause 6.4: The change proposed by the AWU to this clause is opposed. Introducing the concept of ‘agreed hours’ as a trigger for overtime could be a significant cost burden to employers and is not a feature of the current Award.

16.3 Clause 9.3: ABI and NSWBC oppose the change proposed by the AWU. The current formulation of clause 9.3 only provides for a rest break during shifts which occur in part during the mornings. The AWU proposal would alter the existing arrangements to provide an additional entitlement to a paid rest break during shifts which occur at other times of the day which do not include mornings. Accordingly, this proposal is not a technical or drafting issue and if pursued should be considered a substantive variation.

16.4 Clause 14.5(b): Clause 14.5(b) in the exposure draft mirrors the wording of the current award. The change proposed by the AWU is unnecessary and may alter the payment rule which has been translated across from the current award.

17. HORTICULTURE AWARD

17.1 Clause 8.1(a)(iv): ABI and NSWBC oppose the proposed change to this clause by the AWU. The clause is already sufficiently clear and accordingly the change is unnecessary.

17.2 Clause 9.2(c): The AWU argue that their proposed change to clause 9.2(c) is necessary to avoid a diminution in entitlements. ABI and NSWBC oppose the AWU's proposed change to the clause on the basis that shift loadings are not included in the calculation of the "appropriate minimum wage" under the current award and accordingly no diminution in entitlements will occur.

18. NURSERY AWARD

Clause 6.4: The change proposed by the AWU to this clause is opposed. Introducing the concept of 'agreed hours' as a trigger for overtime could be a significant cost burden to employers and is not a feature of the current Award.

19. PASTORAL AWARD

19.1 Clause 5.2: The AWU's submissions state at [5] that clause 5.2 of the Exposure Draft incorrectly identifies individual agreement as being required for the operation of the facilitative provision in clause 30.5. ABI and NSWBC submit that the current clause 5.2 correctly refers to the 'spread of ordinary hours' as requiring agreement between an individual and employer. However, the reference to clause 30.5 is incorrect. Agreements to alter the spread of ordinary hours are actually referred to in clause 30.3. Accordingly, we submit that clause 5.2 should be amended as follows:

Clause	Provision	Agreement between an employer and:
30.3	Spread of ordinary hours	An individual
30.5	Method of implementing a 38 hour week	The majority of employees

19.2 Clauses 10.2(c)(i) and (ii): A number of parties have made submissions in relation to this clause. Due to the differences in opinion expressed by these parties, we consider that further discussion about the provisions is appropriate.

19.3 Clause 25.3: At [22] of its submissions, the AWU suggests that the disability allowance at clause 25.3 should be moved to clause 10.1 so that it applies to a broader group of employees. ABI and NSWBC disagree with this submission on the basis it represents a substantive change and should not be dealt with as a technical or drafting matter.

19.4 Clause 27.4: At [25] of its submissions, the AWU states that this provision should be deleted. While ABI and NSWBC do not agree with this submission generally, if the Commission was minded to remove this provision on the basis of any inconsistency with s 323 of the Act, the provision should be replaced with a clause requiring employees to notify a claim for overtime or time off in lieu within the current timeframes listed in clause 27.4.

19.5 Clause 31.3: We agree generally with the other parties that clause 31.1 of the Exposure Draft requires further attention. Due to the differences in opinion expressed by these parties, we consider that further discussion of the provisions is appropriate.

19.6 Clause 32.9: we do not agree that the wording of clause 32.9 should be amended as proposed by the AWU at [35]. The meaning of the provision is clearer in the Exposure Draft version.

19.7 Clause 33: At [38] of its submissions, the AWU proposes that the second footnote in Clause 33 be deleted as it is not replicated for Saturday night shifts or shifts on a public holiday. ABI and NSWBC do not agree with this submission on the basis that this represents a substantive change rather than a drafting or technical amendment.

20. SUGAR INDUSTRY AWARD

20.1 Clause 6.2(g): ABI and NSWBC oppose the change proposed to the clause proposed by the AWU on the basis that the insertion of the words “at least” before “the minimum hourly rate for the class of work performed” is unnecessary as the words “class of work performed” necessarily denote that there could be different rates - e.g. shiftwork is a class of work. We submit that if the words “at least” were included, this would materially change the effect of the provision and potentially create more uncertainty for employers as to what actually applies.

20.2 Clause 10.2(c): ABI and NSWBC oppose the position adopted by the AWU in relation to this clause and instead rely on paragraph 20.5 of our submissions filed 15 April 2016.

20.3 Clause 10.3(d): ABI and NSWBC oppose the change to the clause proposed by the AWU. Since overtime is payable anyway on any hours worked outside of spread (regardless of whether 38 hours had been worked yet), it is not clear what effect any change to the wording of this clause would have.

20.4 Clauses 11.1(d), 16.1(c), 16.1(t) and 16.1(dd): ABI and NSWBC oppose the AWU’s proposal to replace “*minimum hourly rate*” with “*applicable rate of pay*” on the basis that this represents a significant departure from the terms of the current award and would be a substantive change to the content of the current award.

20.5 Clause 11.5(c): ABI and NSWBC disagree with the AWU submission and in relation to whether the payment of a meal allowance as an alternative to the provision of a meal by employers in the field sector might be appropriate. Our clients rely on paragraph 20.7 of their submissions filed 15 April 2016. Further, we note that the ability to provide a meal allowance instead of a meal in the field sector would achieve the modern awards objective by providing a fair and relevant minimum safety net having regard in particular to:

- (a) the need to promote flexible modern work practices and the efficient and productive performance of work;³
- (b) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden;⁴ and
- (c) the need to ensure a simple, easy to understand, stable and sustainable modern award system”.⁵

³ s134(d), FW Act

⁴ s134(f), FW Act

- 20.6 Clause 11.5(c): ABI and NSWBC support Ai Group’s submissions at paragraph 429 in that the proposal would represent a substantive change to the current award. We submit that either the amalgamation of clauses 11.5(b) and (c), or alternatively, inserting additional clarify wording such that clause 11.5(c) reads “If the employee called out to work overtime is not notified...” would clarify the intent of this provision.
- 20.7 Clause 12.2: ABI and NSWBC support Ai Group’s submissions at paragraphs 430-431 in relation to the omission of clause 38.3 of the current award from clause 12.2 of the exposure draft. This omission represents a significant departure from the terms of the current award and would be a substantive change to the content current award. We also note that the proposed wording adopted by Ai Group (which does not significantly differ from that contained in the current award) was the result of a consent variation approved by the FWC as part of the Modern Awards Review 2012.⁶ Accordingly, the current clause should be maintained.
- 20.8 Clauses 17.3, 26.9 and 26.10: During the conference on 27 April 2016, Deputy President Asbury requested that the parties comment on clauses 26.9(a) and 26.10(a) of the Exposure Draft which relates to Ordinary Hours for Shiftworkers in sugar mills during the nominal slack and crushing seasons being up to 40 hours in any one week, and whether the references should be amended to 38 hours to achieve consistency with clause 17.3 which concerns the arrangement of work and payment of wages to achieve an average 38 hour working week.
- 20.9 Although it is not apparent that there was any specific consideration of these clauses or this subject matter by the Full Bench during the Award Modernisation process, the history of these provisions can be traced to the Sugar Milling Industry Award 2005 (Qld) (**Milling NAPSA**) - see clauses 5.7.5 and 6.2.11 and 6.2.12.
- 20.10 Notably, clauses 17.3, 26.9(a) and 26.10(a) exactly duplicate clauses 5.7.5, 6.2.12 and 6.2.11 of the Milling NAPSA respectively. That is, any potential inconsistency between an “*average 38 hour week in sugar mills*” and maximum ordinary weekly hours of less than 40 for shiftworkers during the nominal slack and crushing seasons already existed in the Milling NASPA.
- 20.11 While it is apparent that the reference to a maximum of 40 ordinary hours during the nominal crushing season is sensible in light of the roster systems set out at Schedule 5 of the Milling NAPSA, the rationale behind the inclusion of a reference to a maximum of 40 ordinary hours during the nominal slack season is less clear. ABI and NSWBC reserve the right to make further submissions in relation to this matter during the course of proceedings.
- 20.12 Schedule I: In response to the NFF submission concerning the definition of ‘standard rate’, our clients note that clauses 15.3, E.1.1, E.1.2 and E.2.2 are calculated by reference to the standard rate. Accordingly, notwithstanding that the FWC has embarked on a process of translating the various allowances into dollar figures to increase the user-

⁵ s134(g), FW Act

⁶ *Modern Award Review 2012 Decision - Sugar Industry Award 2010* [2012] FWA 7512

friendliness of the Award, it appears that the definition of “standard rate” continues to have work to do.

21. WINE INDUSTRY AWARD

21.1 Clause 6.6 (a) and (b) (i): The AWU submission is correct and should be adopted.

21.2 Clause 12: In response to United Voice’s submission, we refer to our correspondence dated 27 July 2015 in which we included a proposed amendment regarding an award note that read:

“Note: for clarity, the ‘minimum hourly wage for ordinary hours of work’ for casual employees is calculated in accordance with clause 13.2” [clause 6.5(b) in the Exposure Draft]

ABI and NSWBC submit that this note effectively provides clarity on the issue. We agree with United Voice’s submission that it would be simpler for the Full Bench constituted specifically for the purposes of the Wine Industry Award to deal with this matter, rather than the Casual Employment Full Bench.

21.3 Clause 19.1(b): In response to the AWU submission, our clients reserve their position should the AWU wish to ventilate the issue in these or other award review proceedings.



Nigel Ward
CEO + Director
Australian Business Lawyers & Advisors Pty Limited
(02) 9458 7286
nigel.ward@ablawyers.com.au



Kyle Scott
Senior Associate
Australian Business Lawyers & Advisors Pty Limited
(02) 9458 7607
kyle.scott@ablawyers.com.au

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

6 May 2016