



Fair Work Commission: 4 Yearly Review of Modern Awards

**REPLY SUBMISSIONS: REVISED EXPOSURE DRAFTS
GROUP 1C, 1D AND 1E AWARDS**

7 DECEMBER 2015

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

1. BACKGROUND

- 1.1 On 23 October 2015 the Full Bench of the Fair Work Commission (**Commission**) published a decision in relation to the exposure drafts of the Group 1C, 1D and 1E awards.¹
- 1.2 In that decision, the Commission called for feedback on the revised Exposure Drafts by 20 November 2015, with reply material to be submitted by 4 December 2015.
- 1.3 These reply submissions are filed by Australian Business Industrial (**ABI**) and the NSW Business Chamber Ltd (**NSWBC**) in accordance with the above directions.

2. MANUFACTURING AND ASSOCIATED INDUSTRIES AND OCCUPATIONS AWARD

Response to AMWU Submissions filed 20 November 2015

- 2.1 We continue to rely on our submissions dated 20 November 2015 with respect to the Commission's proposal to adopt the new concept of 'applicable rate of pay' into various clauses of the exposure draft and maintain our opposition to the proposal.
- 2.2 Accordingly, ABI and NSWBC do not agree with the AMWU's proposal that the exposure draft should be altered in any way to reflect the Commission's proposal as the matter is contentious, substantive and requires a hearing.

3. PHARMACEUTICAL INDUSTRY AWARD

Response to AMWU Submissions filed 19 November 2015

- 3.1 At [4] of the AMWU Submission, the AMWU submit that 'References to clause 22 should be added to clauses 6.3(c) and 8.2(c)'. It is difficult to conceive of a method of obtaining agreement without consultation. In circumstances where both clauses 6.3(c) and 8.2(c) relate to scenarios where an ordinary pattern of work is varied by agreement, ABI and NSWBC consider that the inclusion of reference to clause 22 is unnecessary.

Response to AWU Submission filed 23 November 2015

- 3.2 Clause 9.1(b): In light of the Commission's finding at [102]-[104] of [2015] FWCFB 7236, we consider that the appropriate course is to include a definition of 'Applicable rate of pay'.
- 3.3 Clause 10.6(a): This matter is agreed.
- 3.4 Clause 20.2: This matter is agreed.

4. TEXTILE, CLOTHING, FOOTWEAR AND ASSOCIATED INDUSTRIES AWARD

Response to TCFUA submissions

- 4.1 Table of contents: While we generally consider it unnecessary, we do not have strong opposition to the TCFUA's proposal to amend the Table of Contents to reference 'superannuation' in the sub-heading.
- 4.2 Clause 2.2: The TCFUA submission is correct and clause 2.2 should be amended to reflect the Full Bench decision of 23 December 2014.

¹ [2015] FWCFB 7236

- 4.3 Clause 2.4: This appears to be a drafting error which should be corrected.
- 4.4 Clause 5.1: We disagree with the TCFUA's proposal to vary clause 5.1. We do not consider there to be any ambiguity whatsoever in the language of clause 5.1, and consider that the bolded sub-headings at clauses 5.2, 5.3 and 5.4 make it clear which provisions can be altered by individual, majority or individual, and majority only agreement.
- 4.5 Clause 6.5(e): This issue was addressed in previous submissions and reply submissions. We support the proposed re-drafting as advanced by Ai Group in its submission of 12 November 2014 at [5].
- 4.6 Clause 8.5(b): We disagree with the TCFUA submission and do not consider there to be any material difference between the word 'affected' in the exposure draft and the word 'concerned' which appears in the current award. We note that the word 'affected' is used in the model consultation clause appearing at clause 28 of the exposure draft and in our view it is an appropriate formulation.
- 4.7 Clause 9.5: The TCFUA submission regarding the sub-heading of the clause does not appear to be controversial.
- 4.8 Clause 24.1: We agree with the submission of the TCFUA and the proposed re-drafting contained in their submission.
- 4.9 Clause 24.2: The TCFUA have correctly identified the typographical error but appear to have advanced the incorrect clause reference. It appears the correct clause reference should be clause 24.3 rather than clause 22.3 as suggested by the TCFUA.
- 4.10 Schedules C.3.2, C.3.3, C.4.1, C.4.2, C.4.3 and C.4.4: We disagree with the TCFUA's submissions in respect of alleged errors in the method of calculating wage rates in the various schedules. There is nothing in the current Award which suggests that the casual rates should be based on a compounding method rather than a cumulative method. The casual loading is found at clause 10.4 of the current Award and that provision does not describe the loading as an 'all purpose' casual loading (cf clause 13.1 of the Food, Beverage and Tobacco Manufacturing Award 2010, or clause 14.1 of the Manufacturing and Associated Industries and Occupations Award 2010 as examples). The casual loading in this Award is not 'all purpose' and therefore should not be treated as compounding when determining the rate of pay for weekends, public holidays or shift work.

Response to AWU submissions

- 4.11 Clause 6.4(h): The AWU is correct that clause 6.4(h) of the exposure draft is contained in the current award (at clause 14.7) and therefore should most likely be retained unless the Commission forms the view that it should be removed consistent with its decision not to include in awards provisions specifying which clauses do not apply to casual employees (see [2014] FWCFB 9412 at [69]).

5. VEHICLE MANUFACTURING, REPAIR, SERVICES AND RETAIL AWARD

Response to the MTA Organisations submission dated 4 November 2015

- 5.1 Clause 6.6(c)(iv): ABI and NSWBC suggest that the reference to clause 6.6(c)(iv) be replaced by a reference to clause 6.6(d)(i) and 6.6(b)(iii).
- 5.2 Clause 16.22: ABI and NSWBC agree that a \$ figure should be included to identify the allowance.

Response to AMWU submissions filed 25 November 2015

- 5.3 Clause 6.6(c)(iv): ABI and NSWBC suggest that the reference to clause 6.6(c)(iv) be replaced by a reference to clause 6.6(d)(i) and 6.6(b)(iii).
- 5.4 Clause 16.8(d): The variation proposed by the AMWU at [5] is unnecessary.
- 5.5 Clause 16.10: The submission of the AMWU at [6] appears to be correct.
- 5.6 Clause 43.3: The submission of the AMWU appears to be correct.

Other matters

- 5.7 On 2 November 2015, the Commission published a Statement in relation to proceedings AM2014/93.²
- 5.8 At [4] of the Statement the Commission stated as follows:

[4] We intend to prepare and have published a new exposure draft of the VMRSR Award which, on a provisional basis, will:

- (1) not contain the vehicle manufacturing sector;*
- (2) be re-drafted in simpler language and with a simpler structure; and*
- (3) deal with the issues the subject of argument at the hearing on 10 August 2015.*

[5] A new exposure draft of the Manufacturing Award incorporating the vehicle manufacturing sector will also be published.

[6] Once the new exposure drafts are published, we will issue directions pursuant to which interested parties will have the opportunity to make submissions concerning the exposure drafts. We will also conduct a further hearing if the parties' submissions indicate that there are significant issues concerning the exposure drafts which require determination.

- 5.9 An updated exposure draft is yet to be published incorporating the above changes. In light of the above, ABI and NSWBC will defer further comment on this award until an updated exposure draft is published in line with the Commission's statement.

6. CONCLUSION

- 6.1 In putting these submissions, ABI and NSWBC seek to properly assist the Commission in the discharge of its discretion pursuant to section 156 of the *Fair Work Act 2009* (Cth).

² [2015] FWCFB 7275

6.2 If you have any questions in relation to these submissions, please contact Kyle Scott on (02) 9458 7607.



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