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Fair Work Commission: 4 Yearly Review of Modern Awards

SUBMISSION

PLAIN LANGUAGE RE-DRAFTING

FAST FOOD INDUSTRY AWARD AND HAIR AND BEAUTY INDUSTRY AWARD

(AM2016/15)

25 NOVEMBER 2020

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

1. BACKGROUND

1.1 This submission is filed by Australian Business Industrial (**ABI**) and the NSW Business Chamber Ltd (**NSWBC**) and relates to the Statement issued by the Fair Work Commission (**Commission**) on 28 October 2020 in respect of the plain language exposure drafts (**PLEDs**) of the *Fast Food Industry Award 2010* (**FFIA**) and *Hair and Beauty Industry Award 2010* (**HABIA**).

1.2 ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) and the NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009* (Cth).

1.3 In the sections that follow, ABI and NSWBC address various matters identified in respect of each of the PLEDs.

2. FAST FOOD INDUSTRY AWARD 2010

Clause 4 - Coverage

2.1 The definition of 'fast food industry' at clause 4.2 of the PLED has been amended from the existing FFIA definition. Our clients make the following comments:

(a) Clause 4.2(a) should be changed to refer to 'meals, snacks and/or beverages', as in the current FFIA. Referring to 'food' generally in this context potentially broadens the scope of the definition.

(b) Clause 4.2(b) should be amended to refer to 'take away foods' as per the current FFIA, not just 'foods', for the same reason as above.

2.2 The amendment at clause 4.4(e) to refer to the exclusion of employers 'covered' by the *Hospitality Industry (General) Award 2020* and the *General Retail Industry Award 2020*, rather than employers operating in the hospitality and retail industries at clause 4.1 of the current FFIA, is potentially confusing. Employers who operate under an enterprise agreement may not appreciate that whilst the relevant modern award no longer *applies* to their business, they are still covered by it as a matter of law. We suggest reverting to the existing wording which, in our submission, is clear and is well understood by employers.

Clause 12 - Classifications

2.3 Clause 16.2 of the current FFIA contains the words 'as determined by the employer'. Clause 12.2 of the PLED has omitted those words. To ensure it is clear the employer must *require* the employee to exercise the skills necessary in order to be classified at a particular level, we would propose an amendment as follows:

> *The classification by the employer must be based on the skill level that the employee is required by the employer to exercise in order to carry out the principal functions of the employment.*

2.4 The definition of Fast Food Employee Level 1 at clause 12.4 has omitted the word 'cooking', which is found in the current definition at B.1.1 of the FFIA. This should be re-added to the definition.

Clause 20 - Overtime

2.5 The Note under clause 20.5 refers to 'a roster of ordinary hours'. This is potentially confusing. We would suggest amending to 'a rostered shift of ordinary hours'.

3. HAIR AND BEAUTY INDUSTRY AWARD

Clause 4 - Coverage

3.1 There appears to be a typographical error at (e). 'Face or head massaging' would be better arranged as its own item (a new (f)).

Clause 13 - Classifications

3.2 The requirement for an employee to be required to exercise skills by their employer has been omitted from clause 13.2. We would propose amending it to read as follows:

> *The classification by the employer must be based on the competencies that the employee is required to have, and skills that the employee is required by the employer to exercise, in order to carry out the principal functions of the employment.*

4. CONCLUSION

4.1 ABI and NSWBC appreciate the opportunity to assist the Commission by making this submission to the Commission. Should further information be required, please contact Kate Thomson on (02) 4989 1003.

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

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