



Fair Work Commission: 4 yearly review of modern awards

**AM2016/15 4 YEARLY REVIEW OF MODERN
AWARDS - PLAIN LANGUAGE - STANDARD
CLAUSES**

SUBMISSION

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

10 SEPTEMBER 2018

1. BACKGROUND

- 1.1 On 24 August 2018, the Fair Work Commission (the **Commission**) published a decision relating to outstanding issues in the Payment of Wages (AM2016/8) and Plain Language (AM2016/15) matters as part of the 4 yearly review of modern awards (the **Decision**).¹
- 1.2 Interested parties have been given an opportunity to comment on certain issues that were raised in the Decision.
- 1.3 This submission only responds to issues raised in relation to the Plain Language proceedings. A response to the issues raised in the Payment of Wages proceedings will be provided separately.
- 1.4 This submission is made on behalf of Australian Business Industrial (**ABI**) and the New South Wales Business Chamber Ltd (**NSWBC**). ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009*. NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009*.
- 1.5 ABI and NSWBC appreciate the opportunity to provide this submission and apologise for delay in providing it to the Commission.

2. TERMINATION OF EMPLOYMENT CLAUSES

- 2.1 The Decision invites submissions on whether clause 11.3 of the *Animal Care and Veterinary Services Award 2010 (Animal Care Award)* and clause 12.2 of the *Professional Employees Award 2010 (Professional Employees Award)* may be inconsistent with the National Employment Standards (**NES**).
- 2.2 ABI and NSWBC submit that both clauses are not clearly drafted and could be read as being inconsistent with the NES if they provide a lesser entitlement of 1 months' notice of termination (rather than 5 weeks' notice) for an employee with more than 5 years service that is over 45 years of age.
- 2.3 The Professional Employee's Award provides 1 months' notice for all employees.
- 2.4 The Animal Care Award provides 1 months' notice to veterinary surgeons only.
- 2.5 ABI and NSWBC submit that the intention of providing 1 months' notice to professional employees and veterinary surgeon's is a professional entitlement that reflects industry standard. If an employee has completed 5 years continuous service and is over 45 years of age, they should also be entitled to an additional week of notice. However, we submit that employees with less than 5 years continuous service should not receive the additional week (in addition to a 1 month entitlement to notice).

¹ [2018] FWC 4976

Draft Clause

2.6 In relation to the Animal Care Award and the Professional Employees Award, ABI and NSWBC propose the drafting from the *Architects Award 2010* be adopted to clarify the entitlement to notice on termination.

2.7 A similar clause, regarding notice on termination, appears in the Architects Award but the drafting is clearer and less ambiguous. The clause states:

12.1 Notice of termination is provided for in the NES. Instead of s.117(3) of the Act, in order to terminate the employment of an employee the employer must give the employee one month's notice except where the NES provides a longer period of notice.

2.8 ABI and NSWBC consider that this form of drafting could be adopted in practice, which would clear up any potential inconsistency with the NES entitlement.



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

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