



24 September 2018

**Re: AM2016/15 – Clerks – Private Sector Award 2010 – Plain Language Re-drafting
– MTA NSW Submissions**

1. The Motor Traders' Association of New South Wales (**MTA NSW**) puts forward a submission relating to the inconsistencies between the “minimum weekly rate” provided in Table 3 in clause 16.1 and “minimum hourly wage rate” provided in Table 3 in clause 16.1 and Schedule B – Summary of Hourly Rates of Pay. The Full Bench of the Fair Work Commission has allowed for additional submissions relating to specific errors in the rates.
2. MTA NSW recognises the Full Bench of the Fair Work Commission has handed down a decision on the approach used to calculate the rates of pay in Schedule B – Summary of Hourly Rates of Pay, but this submission relates to the minimum weekly rate provided for in Table 3 and the lack of clarity as to which rate is the minimum rate of pay an employer is required to pay under the Clerks – Private Sector Award 2010.
3. To reflect the inconsistencies, we put forward calculations of weekly rates of pay for adult full-time employees under Level 1 Year 1 and Level 2 Year 1 as examples.

Excerpt from Table 3 – Minimum rates in clause 16.1

Column 1	Column 2	Column 3
Classification	Minimum weekly rate	Minimum hourly rate
Level 1		
Year 1	\$764.70	\$20.12

Using the minimum hourly rate in the above table and outlined in Schedule B – Summary of Hourly Rates of Pay, for a 38 hour week, the weekly rate becomes \$764.56 ($\$20.12 \times 38 = \764.56).

Excerpt from Table 3 – Minimum rates in clause 16.1

Column 1	Column 2	Column 3
Classification	Minimum weekly rate	Minimum hourly rate
Level 2		
Year 1	\$837.40	\$22.04

Using the minimum hourly rate in the above table and outlined in Schedule B – Summary of Hourly Rates of Pay, for a 38 hour week, the weekly rate becomes \$837.52 ($\$22.04 \times 38 = \837.52).

The above calculations result in discrepancies of an underpayment of \$0.14 per week for Level 1 Year 1 and an overpayment of \$0.12 for Level 2 Year 1 when comparing against the minimum weekly rate expressed in Table 3.

4. In the absence of any change to the Table 3 – Minimum rates in clause 16.1, these differences raise confusion among employers as to what their obligations are when paying employees for their 38 hour week. For example, for the Level 1 Year 1 classification, is the minimum rate for a 38 hour week \$764.70 or \$764.56?
5. We note the comment at paragraph 217 of the decision handed down by the Full Bench of the Fair Work Commission (2018 FWCFB 5553), which states that the hourly rates are for the purpose of part time and casual employees covered by awards and to calculate loadings, penalty rates and overtime. So we take this to mean that the published weekly rates are for full-time weekly employees. Practically this means the hourly rate for ordinary hours of work for such weekly employees will effectively be determined by the weekly rate divided by 38 which will not then equate with the published rounded hourly rate in awards applicable to part-time workers. This conflict in the approach to different types of employees in our submission does still create uncertainty as to the correct rate.

6. MTA NSW puts forward a submission for the removal of minimum weekly rates of pay that are rounded to the nearest 10 cents as outlined in Column 2 of Table 3 – Minimum rates in clause 16.1. Where the minimum weekly rate is required, this rate can be achieved by multiplying the minimum hourly rate by 38 hours for the Clerks – Private Sector Award 2010. This approach will remove any discrepancy or inconsistency between equivalent rates of pay within the Clerks – Private Sector Award 2010, and provide clarity for both employers and employees about the rate of pay an employee is entitled to.

The approach of using a minimum hourly rate of pay has been adopted in the past, where the Australian Fair Pay Commission would hand down decisions on minimum wages based on hourly rates of pay.

7. MTA NSW feel that it is appropriate for other interested parties to have an opportunity to indicate their views on this issue because Schedule B will appear in all modern awards so a common approach should be adopted. It is in the interest of all parties to resolve the discrepancies between the minimum weekly rate and the minimum hourly rate as we have outlined above. This will avoid potential underpayment claims and unnecessary disputation over what is the correct minimum weekly rate of pay.



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