
Fair Work Commission: 4 Yearly Review of Modern Awards

SUBMISSIONS IN REPLY

**CLERKS - PRIVATE SECTOR AWARD 2015
PLAIN LANGUAGE AWARD SPECIFIC CLAUSES
(AM2014/219)**

24 MARCH 2017

**AUSTRALIAN BUSINESS INDUSTRIAL
- and -
THE NSW BUSINESS CHAMBER LTD**

1. BACKGROUND

- 1.1 These submissions in reply are filed on behalf of Australian Business Industrial (**ABI**) and the NSW Business Chamber Ltd (**NSWBC**) and relate to the plain language Award-specific clauses of the *Clerks-Private Sector Award 2015 (Award)* published on 3 February 2017.
- 1.2 ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) and has some 4,200 members.
- 1.3 NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009* (Cth) and has some 18,000 members.
- 1.4 ABI and NSWBC have a material interest in the Four Yearly Review of the Award given that both organisations represent numerous employers who are covered by the Award.
- 1.5 We filed submissions with respect to this matter on behalf of our clients on 28 February 2017. ABI and NSWBC have considered the submissions filed on behalf of the other interested parties and wish to make the following brief submission in relation to an issue raised by the Australian Services Union (**ASU**).

2. 'MINIMUM HOURLY RATE'

- 2.1 At paragraph 10 of its submissions, the ASU notes its objection to the use of the expression 'minimum hourly rate' throughout the plain language exposure draft; namely, in the context of penalties, overtime and shiftwork payments.
- 2.2 The ASU objection to the term is expressed as follows:

"Minimum hourly rate' is not a term used in the current modern award and the effect will be that penalties, overtime and shiftwork payments will be applied on the minimum hourly rate regardless of an employee being paid more than the minimum hourly rate."

- 2.3 The Full Bench explained the rationale behind the use of the term 'minimum hourly rate' in [2014] FWCFB 9412 at [44]:

"The exposure drafts have been prepared using the following principles:

-) *Where an award does not contain any allowances or loadings payable for all purposes, the term 'minimum weekly/hourly rate' has been used throughout (e.g. draft Wool Storage, Sampling and Testing Award 2014)*
-) *Where an award contains an allowance or loading that is payable for all purposes, the term 'ordinary hourly rate' has been used to express penalties and loadings (e.g. "overtime is payable at 200% of the ordinary hourly rate" in draft Premixed Concrete Award 2014)*
-) *A definition of all purposes and ordinary hourly rate has been included in the relevant awards along the following lines:*
 - o ***all purposes** means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on leave (see clause 12.2(a))*

- *ordinary hourly rate means the hourly rate for an employee’s classification specified in clause 11.1, inclusive of the industry allowance.”*

2.4 The Award falls into the first category of awards contemplated by the Full Bench; that is, it does not contain allowances or loadings payable for all purposes. Accordingly, we submit that this expression has been correctly used in the context of this Award.

Nigel Ward

CEO + Director

Australian Business Lawyers & Advisors Pty Limited

(02) 9458 7286

nigel.ward@ablawyers.com.au

Kate Thomson

Lawyer

Australian Business Lawyers & Advisors Pty Limited

(02) 4989 1003

kate.thomson@ablawyers.com.au

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