
Fair Work Commission: 4 yearly review of modern awards

**SUBMISSIONS: TRANCHE 3 – CONSTRUCTION
AWARDS - EXPOSURE DRAFTS AM2019/17**

AUSTRALIAN BUSINESS INDUSTRIAL

- and -

THE NSW BUSINESS CHAMBER LTD

22 OCTOBER 2020

BACKGROUND

1. In a Decision¹ issued on 2 September 2019 (**Decision**) the Commission provided an updated overview of the status of the award stage of the 4 yearly review of modern awards and a timeline for the finalisation of exposure drafts.
2. This process involves the release and review of updated exposure drafts in three tranches. The third tranche of updated exposure drafts (**Tranche 3**) was released on 29 January 2020. Draft determinations giving effect to the updated exposure drafts were released concurrently.
3. The Commission directed interested parties to file written submissions on the content of the updated Tranche 3 exposure drafts by 4 March 2020² and also comment on the provisional view that:

“the variation of the modern awards in Tranche 3 in accordance with the draft variation determinations ... is, in respect of each of these awards, necessary to achieve the modern awards objective”.
4. On 20 February 2020, Master Builders Australia wrote to the Commission seeking an exemption from compliance with the Tranche 3 directions for the Construction Awards on the basis that a number of matters in the Construction Awards were still before the Construction Full Bench³.
5. Subsequently a Statement⁴ was issued in relation to the Construction Awards confirming that the Construction Awards would be re-published after the Construction Full Bench issued final variation determinations. The Construction Full Bench issued determinations concerning the remaining substantive issues on 20 March 2020.
6. The amendments from the Construction Full Bench, and a number of other changes have been incorporated into the Construction Awards.
7. On 7 October 2020 the Commission published a Statement⁵ confirming that draft variation determinations will be published for each of the Construction Awards on 8 October 2020 and directed interested parties to comment on the content of the draft variation determinations by 22 October 2020.
8. These submissions are 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*.
9. ABI and NSWBC have a material interest in all of the Construction Awards. Our clients have reviewed each of the Construction Awards and have comments to make in relation to the following Awards:
 - (a) Building and Construction General On-site Award;
 - (b) Joinery and Building Trades Award; and

¹ [2019] FWCFB 6077.

² [2020] FWCFB 421.

³ AM2016/23.

⁴ [2020] FWCFB 1079.

⁵ [2020] FWCFB 5353.

- (c) Plumbing and Fire Sprinklers Award.
10. It appears to ABI and NSWBC that the amendments made in the Exposure Draft, dated 8 October 2020, are made to correct minor technical and/or drafting errors only.

BUILDING AND CONSTRUCTION (GENERAL) ON-SITE AWARD 2010

Clause 4.4(g) - the quarrying industry in the Cement, Lime and Quarrying Award 2020

11. We recommend clause 4.4(g) should be changed from “*the quarrying industry in the Cement, Lime and Quarrying Award 2020*” to “*the quarrying industry as defined in clause 4.3 of the Cement, Lime and Quarrying Award 2020*”.

Clause 14.8(a) - Attendance at block release training

12. With the deletion of the words “*Registered Training Organisation*”, the brackets before and after RTO should also be deleted as RTO is defined at clause 14.1(e) of the Award.

Clause 14.9(a)(iii) - Competency based progression

13. With the deletion of the words “*Registered Training Organisation*” in clause 14.9(a)(iii), the brackets before and after RTO should also be deleted as RTO is defined at clause 14.1(e) of the Award.

Clause 16.5(c) - RDO Banking

14. The word “*the*” needs to be inserted at the beginning of the second line in clause 16.5(c) before the word “*employer*” and after the word “*between*”.

Clause 16.9(b) & (c) Hours of work - part-time employees

15. The clause 16.9(b) and 16.9(c) refers to “*this clauses 16 and 17 Shiftwork*”. This should be changed to “*this clause 16 and clause 17 – Shiftwork*”

Clause 19.9 – School-based apprentices

16. Clause 19.9 refers to “*employees undertaking a traineeship*”. The word “*traineeship*” should be changed to “*apprenticeship while also undertaking a course of secondary education*”.
17. This is in accordance with Schedule C.1 of the Award.

Clause 20.3 – Payment of wages

18. The clause refers to “*clause 1.1*”.
19. This should be a reference to clause 20.6.

Clause 26.6 – Adjustment of allowances

20. The clause refers to “*clause B.2.1*”.
21. This should be a reference to schedule B.2.1.

Schedule B.1.1 - Weekly wage-related allowances

22. The “*Electrician’s licence allowance*” has a superscript number one (1) to indicate a footnote at the end of the table.

23. There is no footnote for the number one (1) at the end of the table. The superscript number one (1) next to this allowance should be changed to an asterisk symbol (*).

Schedule B.1.2 - Hourly wage-related allowances

24. The clause reference for “*Computing quantities allowance*” is “*clause 23.10(c)*”. This should be changed to clause 23.10(b).
25. The clause reference for “*Scaffolding or rigging certificate allowance*” is “*clause 23.10(b)*”. This should be changed to clause 23.10(c).

JOINERY AND BUILDING TRADES AWARD 2010

Schedule B – Summary of Hourly Rates of Pay

26. ABI and NSWBC submit that the shiftworker ordinary and shift rates table are unclear. In the following tables B.2.3, B.2.6, B.3.3 and B.3.6 there is an ‘afternoon or night’ shift allowance of 150% of the ordinary hourly rate.
27. The ‘afternoon or night’ shift allowance column in the respective tables seem to suggest that it is only applicable to ‘continuous shiftwork’. Clause 25.4(a) of the Award states that “*other than for work on a Saturday, Sunday or public holiday, the rate of pay for afternoon or night shift is 150% of the ordinary hourly rate*”.
28. Compared to the wording of clause 25.4(b) of the Award, the afternoon or night shift allowance applies to all shiftwork.
29. This issue may be resolved, if the ‘afternoon or night’ shift allowance column in the respective tables is moved under the heading ‘all shiftwork’ next to the ‘public holiday’ column.

Schedule C.1.1 – Wage related allowances

30. The “*Industry allowance – employee engaged on joinery work, shopfitting, stonemasonry or outside work*” has a superscript number two (2) to indicate a footnote at the end of the table.
31. There is no footnote for the number two (2) at the end of the table. The superscript number two (2) next to this allowance should be changed to a number one (1).

PLUMBING AND FIRE SPRINKLERS AWARD 2010

Schedule B.1 – Plumbing and mechanical services

32. The clause reference for Industry allowance is clause 21.2(b). This clause reference should be clause 21.3(a).
33. To ensure consistency with the “*Apprentice*” and “*Adult apprentice (as defined)*” rows. The word “*Yes*” in the column for “*Plumbing trade allowance*” for “*Trainee apprentices*” should be removed and replaced with “*Refer 18.2(b)(iv) and 18.2(c)(v)*”.

Schedule B.2 – Irrigation installer

34. The clause reference for Industry allowance is clause 21.2(b). This clause reference should be clause 21.3(a).

Schedule B.3 – Fire sprinkler fitting

35. In this table “*Worker Level 1*” and “*Worker Level 2*” employees do not get the “*Fire Sprinkler fitting trade allowance*”.
36. Clause 21.3(e)(iv) states that “*Classifications below Sprinkler fitting tradesperson Level 1 must be paid the plumbing trade allowance on an incidence basis, calculated hourly, under clause 21.3(b)*”.
37. To ensure clarity on the relevant allowances that might be applicable, the word “*No*” in the column for “*Fire sprinkler fitting trade allowance*” for “*Worker Level 1*” and “*Worker Level 2*” should be removed and replaced with “*Refer 21.3(e)(iv)*”.
38. To ensure consistency the “*Industry disability allowance and space, height and dire money allowance*” for the “*Apprentice*” row should be changed from “*Refer 18.2(b)*” to “*Refer 18.2(b)(iii) and 18.2(c)(iii)*”.
39. To ensure consistency the “*Fire sprinkler fitters adjustment*” for the “*Apprentice*” row should be changed from “*Refer 18.2(b)*” to “*Refer 18.2(b)(iii) and 18.2(c)(iii)*”.

Schedule F.2 – Expense Related Allowances

40. The “*Tool allowance*” should be payable on a “*per week*” basis in accordance with clause 21.8(a), as opposed to a “*per hour*” basis as it is currently in the exposure draft.

Filed on behalf of Australian Business Industrial and the NSW Business Chamber Ltd

22 October 2020