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**Fair Work Commission: 4 yearly review of modern awards**

**SUBMISSIONS: PASTORAL AWARD 2010**

**AUSTRALIAN BUSINESS INDUSTRIAL**

**- and -**

**THE NSW BUSINESS CHAMBER LTD**

**14 AUGUST 2017**

## BACKGROUND

1. 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*.
2. ABI and NSWBC have a material interest in the Pastoral Award 2010 (**Award**).
3. These submissions relate to the Exposure Draft of the Award originally published on 15 January 2016 and a revised copy of which was released on 17 July 2017.
4. In its Decision of 6 July 2017<sup>1</sup> the Commission directed interested parties to file submissions regarding the payment of first aid allowance (Item 26: clause 10.1(c)) by 28 July 2017, later extended to 4 August 2017.
5. In its Statement of 24 July 2017,<sup>2</sup> the Commission directed interested parties to file submissions by 14 August 2017 regarding:
  - (a) The intended operation of clause 17.2(c)(ii), in particular where the second meal allowance is payable;
  - (b) The intended operation of the meal allowances provisions in clause 36, in particular the provisions contained in clauses 36.5, 36.10 and 36.11 (collectively item 9: Part 2 - General Employment Conditions (Clauses 17.2 and 36 - overtime meal breaks for piggery attendants)); and
  - (c) The intended operation of clauses 10.2(d) and 32.7 of the exposure draft (namely, items 30 and 62: clauses 10.2(d) and 32.7 - overtime meal allowance).

## SUBMISSIONS

### Payment of First Aid Allowance

6. ABI and NSWBC do not necessarily agree with the AWU that the wording in clause 10.1(c) of the exposure draft is expressed to the effect that an employee would have to actually carry out first aid duties to receive the allowance.
7. In addition, we note that clause 10.1(a)(ii) of the exposure draft makes it very clear that the first aid allowance is an allowance paid for all purposes and it is therefore expressly included in an employee's rate of pay.
8. However, we note the AWU's concerns and understand the changes are sought in an attempt to make this clause of the exposure draft easier for all parties to understand.
9. Accordingly, we do not oppose an objection to the AWU's proposed amendments as set out at paragraph 13 of the AWU's submissions dated 17 April 2016.

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<sup>1</sup> [2017] FWCFB 3433.

<sup>2</sup> [2017] FWC 3883.

**Clause 17.2(c) of the Award | Clause 10.2(d) of the Exposure Draft**

10. Clause 17.2(c) of the Award and clause 10.2(d) of the exposure draft are located in the “General Employment Conditions” section of the Pastoral Award and apply to all employers and employees covered by the Pastoral Award.
11. ABI and NSWBC submit that the wording of subclauses 17.2(c)(i) and 17.2(c)(ii) create confusion for employers and employees in relation to the provision of a subsequent overtime meal allowance.
12. Subclause 17.2(c)(i) applies where:
  - (a) an employee is required to work overtime *after* working their ordinary hours; and
  - (b) the period of overtime will be more than 1.5 hours.
13. Subclause 17.2(c)(ii) applies where:
  - (a) an employee is required to work overtime for more than 2 hours after their ordinary ceasing time; and
  - (b) they have not been notified before leaving work on the previous day that they will be required to work overtime.
14. In each case, the employee will be entitled to receive a meal or be paid meal allowance.
15. In each of subclauses 17.2(c)(i) and 17.2(c)(ii), it is not clear as to when the requirement to supply a subsequent meal, or pay a subsequent meal allowance, arises.
16. Subclause 17.2(c)(i) refers to a second meal or meal allowance for “any subsequent meals” and subclause 17.2(c)(ii) also refers to an entitlement to a further meal or meal allowance where the overtime work “extends into a second meal break”.
17. However, the clauses do not specify when the entitlement to the second meal or meal allowance arises.
18. In relation to the subsequent meal or meal allowance in subclauses 17.2(c)(i) and 17.2(c)(ii), we submit the meal breaks provision in clause 15.1(a) of the Award does not assist to determine when the entitlement to a subsequent meal arises given the meal break entitlement is expressed to apply “*after commencing ordinary hours of work*”.
19. In relation to the time at which the second meal allowance would be payable, in our view, consideration could be given to amending clause 15.1(a) of the Award to clarify when a second meal break arises during overtime.
20. By way of example, an amendment could include the insertion of the words, “or the last meal break” after “commencing ordinary hours of work” to make it clear when a second meal break arises.
21. Alternatively, a new subclause 17.2(c)(iii) could be inserted to specify when the subsequent meal entitlement arises.
22. Our observations in relation to clause 17.2(c) also apply in relation to Clause 10.2(d) of the exposure draft given the substantive similarities between these clauses.

**Additional Comments in Relation to Subclause 17.2(c)(ii)**

23. In relation to subclause 17.2(c)(ii), there is also a point of confusion because it requires overtime to be worked for *more than* 2 hours after an employee’s ordinary ceasing time before being entitled to the first meal or meal allowance.
24. The reference to “more than 2 hours” is not well-defined in its expression, however we would interpret this to mean that the entitlements to receive a meal or meal allowance arises as soon as the employee has worked any time over 2 hours, e.g. at the 2 hour and 1 second mark.
25. We also disagree that the reference to “two hours” as the time at which the first entitlement arises, means that further entitlements to meals or meal allowances arise every 2 hours thereafter. In our view, it would be counter to common sense to have employees supplied with a meal (or allowance) every 2 hours during overtime.

**Clause 36 of the Award | Clause 32.7 of the Exposure Draft**

26. Clause 36 of the Award and clause 32.7 of the exposure draft apply specifically to employers and employees engaged in pig breeding and raising.
27. We note that clause 32.7 of the exposure draft regarding the overtime meal allowance is different from the current clause 36 of the Award in that clause 36.5 of the Award no longer appears.
28. ABI and NSWBC is of the view that clause 32.7 of the exposure draft is appropriate as drafted and overcomes the confusion between the interaction of clauses 36.5, 36.10 and 36.11 of the current Award.
29. Accordingly, we do not propose to comment extensively on clauses 36.5, 36.10 and 36.11 of the current Award, save as to say that the current clause 36.5 of the Pastoral Award creates the same confusion as that discussed above in relation to clause 17.2(c) of the Award, namely in relation to when the entitlement to a subsequent meal or meal allowance arises.
30. We note clause 36.7 of the Pastoral Award provides for 20 minutes of crib time after each 4 hours of overtime. This could support an interpretation that “subsequent meals” in clause 36.5 could correspond with the 4 hour crib breaks in clause 36.7.
31. With the removal of clause 36.5 of the Pastoral Award from the exposure draft, clause 32.7 of the exposure draft overcomes the question of whether an employer is required to provide “subsequent meals” or meal allowances during overtime. It is now clear that:
  - (a) an employee is entitled to one meal or the payment of one meal allowance after two hours of overtime where the overtime is unplanned and not notified at least one day beforehand; and
  - (b) where the overtime is notified at least one day prior to an overtime day, the payment of the meal allowance is not payable unless the overtime is cancelled with less than one day’s notice.
32. Another observation we make is that clause 32.7(b) of the exposure draft is not clear as to whether the employee is entitled to be supplied a *meal* where the employee is notified the day or days prior to an overtime day (notwithstanding the employee is *not*

entitled to receive the *meal allowance* when notified of the requirement to work overtime).

33. We submit it should be made clear that clause 32.7(b) excludes both the obligation to provide a meal and pay the meal allowance when notified of the requirement to work overtime. But that the requirement will be to pay the allowance only where the overtime is cancelled and the notice of cancellation is not given at least the day before the planned overtime.
34. The final comment we have in relation to clause 32.7 of the exposure draft is that there is a typo on the last line of clause 32.7(b). The sentence, "...the employee *with* be paid the meal allowance" should read "... the employee *will* be paid the meal allowance."



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

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