
Fair Work Commission: 4 yearly Review of modern awards

SUBMISSION

**4 YEARLY REVIEW OF MODERN AWARDS: (AM2018/13)
AGED CARE AWARD 2010 - SUBSTANTIVE ISSUES**

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

20 SEPTEMBER 2019

1. BACKGROUND

1.1 On 26 August 2019, the Fair Work Commission (the **Commission**) published a decision relating to the *Aged Care Award 2010* (the **Decision**).

1.2 In that Decision, the Commission:

- (a) expressed a provisional view that the last dot point in B4 of the current classification structure be deleted and replaced with alternate wording; and
- (b) expressed a provisional view that a notation should be inserted at the commencement of the classification definitions; and
- (c) expressed a provisional view in relation to transitional arrangements for the increase in the weekend and public holiday penalty rates for casuals; and
- (d) decided to vary the Award in respect of the application of minimum engagement provisions to broken shifts.

1.3 The Commission also published, with its Decision, a Draft Variation Determination.

1.4 At [203] of the Decision, the Commission invited interested parties to comment on both the provisional views outlined above and the terms of the Draft Variation Determination.

1.5 This submission is made on behalf of Australian Business Industrial (**ABI**) and the New South Wales Business Chamber Ltd (**NSWBC**). We thank the Commission for the opportunity to comment on these matters and provide this submission.

2. COMMENTS IN RELATION TO THE PROVISIONAL VIEW REGARDING CLASSIFICATIONS

2.1 The provisional view of the Commission is that the classification schedule should be amended to remove the last dot point of B.4 and replacing it with the following wording:

In the case of a personal care worker, holds a relevant Certificate III qualification (or possesses equivalent knowledge and skills) and uses the skills and knowledge gained from that qualification in the performance of their work.

2.2 Further, the Commission intends to insert a notation at the title of Schedule B as follows:

Note: Any dispute about the classification of a particular employee may be referred to the Fair Work Commission in accordance with clause 9 of this award.

2.3 Our clients did not oppose the wording proposed to be inserted at B.4, as it clarifies that the employee would be required to use the skills and knowledge gained from the qualification in the performance of their work.

- 2.4 Our clients maintain in relation to the notation that it would be beneficial to include the following wording at the end of the notation for clarification purposes:

The Fair Work Commission may require an employee to demonstrate its satisfaction that the employee utilises the requisite skills and knowledge, and that these are relevant to the work the employee is doing.

- 2.5 This wording is taken from clause 3 of the *Hospitality Industry (General) Award 2010* and our clients consider that it would be useful in assisting employees and employers understanding in relation to the requirement for the employee to utilise the skills and knowledge in their role.

3. COMMENTS IN RELATION TO THE VARIATION TO RATES OF PAY FOR CASUAL EMPLOYEES WHEN WORKING WEEKENDS AND PUBLIC HOLIDAYS

- 3.1 The provisional view provides that the Commission considers that the increase in weekend and public holiday rates for casual employees should be operative from 1 December 2019. The Commission has indicated that this should be by way of transitional arrangements.

- 3.2 In accordance with the provisional view, from 1 December 2019 casual employees:

- (a) Between midnight Friday and midnight Saturday would receive 160% of the ordinary hourly rate (inclusive of the casual loading);
- (b) Between midnight Saturday and midnight Sunday would receive 210% of the ordinary hourly rate (inclusive of casual loading); and
- (c) On public holidays would receive 260% of the ordinary hourly rate (inclusive of casual loading).

- 3.3 Then, from 1 July 2020 casual employees:

- (a) Between midnight Friday and midnight Saturday would receive 175% of the ordinary hourly rate (inclusive of the casual loading);
- (b) Between midnight Saturday and midnight Sunday would receive 225% of the ordinary hourly rate (inclusive of casual loading); and
- (c) On public holidays would receive 275% of the ordinary hourly rate (inclusive of casual loading).

- 3.4 Our clients submit that the changes should take place from 1 July 2020 to allow businesses time to arrange funding for this considerable increase in labour costs.

- 3.5 We note the Commission's observations at [151] to [152] that there is a low utilisation of casuals in the industry and that the variations would, on that basis, not result in a substantial cost. While that may be the case in the aggregate, the reality is that some employers have very low rates of casual employees, while there are other employers who utilise casual employees in far greater numbers. It is those businesses that will be impacted significantly.
- 3.6 Many employers are not-for-profit organisations and rely on funding from a range of sources to undertake their services. Those businesses are often required to adhere to very tight budgets for each financial year.
- 3.7 If the changes are made in accordance with the provisional view, many businesses will not be able to sustain the increase in monetary costs for the time period from 1 December 2019 to 30 June 2020.
- 3.8 This increase in labour costs, whether it is small for some employers and larger for others, was not taken into account when budgets were prepared in advance of this financial year, and will therefore be unsustainable without additional funding.
- 3.9 For those reasons, our clients submit that the changes should be implemented from 1 July 2020 to allow businesses time to arrange funding for this cost increase.

AUSTRALIAN BUSINESS LAWYERS & ADVISORS

On behalf of Australian Business Industrial and the New South Wales Business Chamber Ltd

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