



SUBMISSION ON BEHALF OF THE AUSTRALIAN FEDERATION OF
EMPLOYERS AND INDUSTRIES (AFEI)

AWARD MODERNISATION –
TRANSITIONAL ARRANGEMENTS FOR DIVISION 2B STATE AWARDS

AFEI
Australian Federation of
Employers & Industries

BEFORE FAIR WORK AUSTRALIA

SUBMISSION BY AUSTRALIAN FEDERATION OF EMPLOYERS AND INDUSTRIES (AFEI) – AWARD MODERNISATION _ TRANSITIONAL ARRANGEMENTS FOR DIVISION 2B STATE AWARDS

SUBMISSION

1. AFEI makes the following submissions in respect to transitional arrangements for Division 2B State Awards.
2. Division 2B State awards which cover employers in New South Wales were the subject of the State Wage Case (SWC) Decision of July 2009 which awarded an increase in wages and allowances of 2.8%.¹
3. Although the SWC Decision was handed down on 30 July 2009, the operative date of the increases varied widely across NSW State awards. As the Industrial Relations Commission of NSW Wage Fixing Principles required that the date of the increase could occur no earlier than 12 months after the date of the previous SWC increase, the operative date of the 2009 increases in many awards occurred as recently as December 2009.
4. Following the SWC Decision 2009 and earlier SWC Decisions, the rates of pay in most NSW State Awards were substantially higher than the comparable pay scale rates derived from NAPSAs. After the Annual Minimum Wage Review adjustment of \$26.00 per week effective 1 July 2010, transitional pay scale rates in most cases are now marginally higher than comparable rates in Division 2B State awards. In some cases the Division 2B rates are significantly higher than the Modern Award rates of pay.

¹ State Wage Case 2009 [2009] NSWIRComm 120 (30 July 2009)

5. AFEI supports the approach proposed by certain parties including the Australian Government (submission dated 25 June 2010) and the ACTU (submission dated 25 August 2010) that phasing of Division 2B State awards should occur as if the Division 2B State awards were NAPSAs, that is, the same phasing schedule and transitional rates which currently applies to employers formerly covered by NAPSAs should be applied to counterpart Division 2B State awards.
6. AFEI does agree with or support, however, the proposal that the first transitional phase for Division 2B State awards should commence on 1 January 2011.
7. When the Australian Industrial Relations Commission (AIRC) considered model transitional arrangements for modern awards it noted that transitional arrangements would be complex and a delayed implementation would be reasonable.

*'[23] ...We have decided to limit the number of matters which are governed by phasing provisions to the main matters affecting pay. **Phasing provisions will necessarily be complex.** By limiting the number of matters we hope to minimise complexity and reduce the scope for confusion.'* (our emphasis)

*[30] We have decided that phasing should commence on 1 July 2010. The effect will be that where the phasing provisions are included in an award the pre-modern award conditions relating to minimum wages, casual and part-time loadings, Saturday, Sunday, public holiday, evening and other penalties and shift allowances will continue to apply until 1 July 2010 when the modern award obligations will commence. Despite the fact that the legislation contemplates the introduction of modern awards from 1 January 2010, **a delay of six months in the implementation of the phasing arrangements is reasonable when the range and nature of the changes which will be required are properly taken into account.**' (our emphasis)².*

² [2009] AIRCFB 800 2 September 2009

8. Notwithstanding the consideration given to reducing the complexity of the model transitional arrangements, the arrangements are in our submission, complex and difficult to understand, and costly to implement.
9. The AIRC Decision concerning model transitional arrangements for Stage 1 and Stage 2 modern awards was handed down on 2 September 2009.
10. Employers who were to be covered by modern awards had almost 9 months to prepare for the first stage of transitional arrangements for modern awards made in Stage 1 and Stage 2 of the award modernisation process, and almost 7 months for modern award made in Stage 3 and Stage 4 awards. All employers had six months from the commencement of modern awards. In our experience that period was barely sufficient.
11. Employers who are currently covered by Division 2B awards do not know, at this stage, what transitional arrangements will be applied and potentially would have very little opportunity to prepare for the implementation of transitional arrangements if they were to commence on 1 January 2011.
12. Employers covered by Division 2B awards are typically smaller employers with limited resources to assist in the transition to modern awards. It would be inappropriate, in our submission, for such employers to be expected to prepare for the implementation of transitional arrangements in a significantly shorter period than available for constitutional corporations.

13. The cost of payroll and other administrative changes associated with transitional arrangements is not justified by the relatively small increases or decreases in rates of pay which would occur on 1 January 2011. For example, the increase in the rate of pay for a Shop Assistant in NSW covered by the relevant Division 2B State award would be \$2.90 per week.
14. AFEI submits that the first transitional step for employers currently covered by Division 2B awards should commence six months after the commencement of the modern award, that is 1 July 2011, at the second (60%) stage of the transitional arrangements, as if the Division 2B Award were a NAPSA for the purpose of transitional rates of pay and other transitional arrangements.
15. AFEI reserves its position to make further submissions concerning proposals for the preservation of any specific terms of Division 2B State awards.

13 September 2010