

Fair Work Commission  
Level 10, Terrace Tower, 80 William Street  
East Sydney NSW 2011  
Via email: [AMOD@fwc.gov.au](mailto:AMOD@fwc.gov.au)

21 April 2017

**Re: AM2014/268 Food, Beverage and Tobacco Manufacturing Award 2010**

## BACKGROUND

1. These submissions of the Australian Workers' Union (AWU) are made pursuant to undertakings made by the AWU in Conference before Commissioner Lee on 12 April 2017 in Sydney. All item numbers refer to the *Summary of Submissions – Technical and Drafting* published by the Commission on 8 March 2017.

## DRAFTING AND TECHNICAL ISSUES

2. **Items 9 & 10 – Facilitative provisions:** The AWU continues to oppose the AIG submissions to remove clauses 24.10 & 24.13 from the table at clause 7.2(a) of the Exposure Draft.
3. These provisions are facilitative in nature. Both of the provisions in question outline a process that facilitates agreement to depart from the award standard, and therefore their inclusion in the table at clause 7.2(a) of the Exposure Draft is both proper and necessary.
4. The tables at clause 7 assist the reader in identifying and locating areas of the award that allow for agreement in order to depart from a standard award condition or process. The removal of clauses 24.10 & 24.13 from the table will affect the completeness of these tables.
5. AIG have expressed that clauses 24.10 & 24.13 do not belong in the table at 7.2(a) as a result of a strict reading of clause 7.1(b) of the Exposure Draft, where

the provisions listed in the tables are described as not only stating a framework for agreement, but also as establishing the award condition. AIG have stated the basis for its submission is that it would be 'wrong' to describe clauses 24.10 & 24.13 as facilitative provisions if they do not align with the text in 7.1(b). In our opinion, this is not sufficient to justify their removal from the table at 7.2(a).

6. It is the understanding of the AWU that there is no dispute over clauses 24.10 & 24.13 actually being facilitative in nature. The Collins Dictionary defines 'facilitate' as:

*“to make easier; assist the progress of.”*

7. Both clause 24.10 and clause 24.13 provide a framework to assist agreement and are therefore facilitative in their operation. It is our understanding that AIG's concern is consequently anchored in the wording of clause 7.1(b) and not in the actual nature of the clauses in question. In other words, it is not the nature of the clauses that disqualify them from the table at 7.2(a), it is the words of 7.1(b) that does so.
8. The AWU agrees with AIG that there is some tension between the wording of 7.1(b) and the inclusion of clauses 24.10 & 24.13 in the table at 7.2(a). However, clauses 24.10 & 24.13 are properly described as 'facilitative' and should therefore be retained in the table at 7.2(a). There has been no suggested detriment that would flow from such retention. We suggest that as it is the wording at 7.1(b) that is problematic, perhaps it can be amended to alleviate the concerns of AIG. The AWU, however, does not propose that any amendments be made to clause 7 of the Exposure Draft.
9. **Item 25 – Casual employment:** The AWU accepts that the current wording of clause 10.2 is inaccurate, and that the word 'ordinary' in 10.2(a) should be replaced with the word 'minimum', as per the AIG submission.
10. **Item 33 – Wages and Allowances:** The AWU does not support the AIG submission to insert 'full time employee' into the 'minimum weekly rate' column of the table at 14.1(a).
11. The concern expressed by AIG is explicitly addressed by clause 14.1(b), which is positioned directly beneath the table. The proposed amendment is therefore

entirely unnecessary.

12. **Item 35 – Allowances and special rates:** The AWU continues to support the reformatting of clause 20 of the Exposure Draft. The AWU has sighted the amended reformatting of clause 20 at Annexure A of the AMWU submission dated 21 April. We support the amendments made by the AMWU on the basis that the AMWU proposal is clearer and easier to follow than the current Exposure Draft clause.

13. **Item 45 – Rates for shiftworkers:** The AWU does not support replacing clause 23.3 of the Exposure Draft with the equivalent provision of the current award. In our view, the Exposure Draft clause is superior in terms of clarity and navigation, and to delete it in its entirety would be counterproductive.

14. If AIG intends to press this submission, in order to properly consider the concerns of AIG in relation to clause 23.3 the AWU would appreciate if those concerns were expressed in writing.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'ZD', with several horizontal strokes underneath.

Zachary Duncalfe  
**NATIONAL LEGAL OFFICER**  
**The Australian Workers' Union**