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Vice President Hatcher
Fair Work Commission
80 William Street
East Sydney NSW 2011

By email: chambers.hatcher.vp@fwc.gov.au

Dear Vice President,

Re: AM2014/197 Casual Employment – Minimum Engagement – Draft Determinations

We refer to the above matter and a statement issued by the Fair Work Commission (**Commission**) on 22 December 2017 ([2017] FWCFB 6776). Accompanying that statement, the Commission published draft determinations that propose to vary a number of awards in relation to casual minimum engagement periods. Pursuant to paragraph [10] of the statement, we write to provide comment on three of those draft determinations.

Food, Beverage and Tobacco Manufacturing Award 2010

It is proposed that the *Food, Beverage and Tobacco Manufacturing Award 2010* be varied by substituting clause 12.2 of the award with the following: (emphasis added)

12.2 *A part-time employee must be engaged for a minimum of not less than 4 consecutive hours per day or shift. ...*

We understand that the draft determination has been prepared to reflect the terms in which the AMWU proposed its claim ([2017] FWCFB 3541 at [109] and [409]). We respectfully suggest however that the drafting of the proposed clause could be improved by deleting the words “not less than” as underlined above.

To require that a part-time employee must be engaged for a “*minimum*” of four consecutive hours or that a part-time employee must be engaged for “*not less than*” four consecutive hours has the same effect. It is therefore not necessary to stipulate that a part-time employee must be engaged for “*a minimum of not less than*” 4 hours.

Manufacturing and Associated Industries and Occupations Award 2010

We make the same observations regarding the proposed change to clause 13.2 of the *Manufacturing and Associated Industries and Occupations Award 2010* as we have above regarding the *Food, Beverage and Tobacco Manufacturing Award 2010*.

Water Industry Award 2010

The draft determination in relation to the *Water Industry Award 2010* proposes to delete clause 10.5(a) of the award and replace it with a new provision that imposes a two hour minimum engagement.



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Clause 10.5(a) of the award is in the following terms:

- (a) *A casual employee is an employee who is engaged and paid as such but will not include a part-time or full-time employee.*

To our knowledge, the Commission has not made any decision to delete the definition of casual employment from the *Water Industry Award 2010* in these proceedings (or in the context of any other proceedings conducted as part of the 4 yearly review of modern award). Accordingly, we are unable to identify the basis upon which the draft determination proposes the deletion of clause 10.5(a).

In our submission, consistent with the relevant Commission decisions, clause 10.5(a) should not be deleted. Any new clause introducing a casual minimum engagement period should not replace clause 10.5(a), but instead be inserted as a new, additional clause.

Yours sincerely,

Ruchi Bhatt
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