

Fair Work Commission
Level 4, 11 Exhibition Street
Melbourne, VIC 3000
By email: amod@fwc.gov.au

22 February 2017

Re: AM2014/269 AWU reply submissions on drafting and technical issues in the Exposure Draft for the *Funeral Industry Award 2010*

Background

1. On 21 December 2016 the President, Justice Ross published Amended Directions directing parties to file submissions in reply to drafting and technical issues raised in Group 4 exposure drafts by 22 February 2017.
2. The following parties filed submissions on drafting and technical issues found in the Exposure Draft for the *Funeral Industry Award 2010* ('the Exposure Draft') as published on 16 November 2016:
 - Australian Workers Union (**AWU**)¹
 - United Voice (**UV**)²
 - Australian Business Industrial & NSW Business Chamber (**ABI**)³
 - Australian Federation of Employers and Industries (**AFEI**)⁴
3. The AWU submissions in reply appear below.

Reply submissions

Uniform Allowances – Clause 16.3(c)

4. AFEI paragraph 35: We disagree that the uniform allowance only applies to full-time employees as submitted by AFEI and refer to our 20 January 2017 Submission at paragraph [8]. The uniform allowance applies to all employees required to wear a uniform.

¹ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014269-sub-awu-200117.pdf>

² <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014261-sub-uv-161216.pdf>

³ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014-256andors-sub-abinswbc-180117.pdf>

⁴ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014256andors-sub-afei-180117.pdf>

5. Clause 10.2(c) entitles a part-time employee 'on a pro-rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.' For casual employees, the casual loading is not paid in lieu of any specific entitlements under the Award including allowances.

Method of working shifts – Clause 18.4(c)

6. AFEI paragraph 32: AFEI submit that the reference at this clause to the consultation clause 27 is unnecessary and 'lengthy' and should be deleted. The AWU disagree. The reference ensures navigation to, and observation of the consultation requirements where changes to regular rosters or ordinary hours of work are being contemplated.

Overtime for shift workers – Clause 18.6

7. AFEI paragraph 36 / ABI paragraph 9.7: AFEI submit a shift worker is paid overtime on the 'minimum hourly rate' exclusive of shift loadings. ABI propose to change 'applicable rate' at this clause to 'applicable minimum hourly rate'. These are inaccurate interpretations of 'applicable rate' and to adopt the ABI proposal is accordingly a substantive change.

Overtime – Removals – Clause 19.4

8. ABI paragraph 9.8: We disagree with the ABI submission that the 2-hour minimum engagement periods prescribed at clauses 19.4(a) and 19.4(b) exclude the operation of the substantive part-time and casual employment minimum engagement clauses 10.5 and 11.3.
9. The 'minimum payment of two hours' for removals performed in accordance with clauses 19.4(a) and 19.4(b) are applicable to full-time employees only. Removals performed by part-time and casual employees in accordance with these clauses are subject to a minimum engagement period of 3 and 4 hours respectively.
10. To clarify the interaction between these clauses, we suggest an additional clause 19.4(c):

Work performed by part-time and casual employees as prescribed in clauses 19.4(a) and 19.4(b) is subject to the applicable minimum engagement periods prescribed at clauses 10.5 and 11.3.

Penalty rates – Clause 20.1

11. UV paragraph 10; ABI paragraph 9.9: The AWU supports the submissions of the UV. For the same reasons set out above, we disagree with the ABI submission that the minimum engagement periods set out at clauses 20.1(a)(i) and 20.1(b) excludes the operation of clauses 10.5 and 11.3. A similar clause as suggested above could be inserted as clause 20.1(d) as follows:

Work performed by part-time and casual employees as prescribed in clause 20.1 is subject to the applicable minimum engagement periods prescribed at clauses 10.5 and 11.3.

12. The AWU also question why there is no minimum payment for time worked on public holidays at clause 20.1(c)(ii). We suggest the following words at this clause:

...for all work performed on a public holiday with a minimum payment of two hours pay.

13. The AWU can provide further submissions on request of the Commission or other parties regarding the relevant pre-modern instruments in regards to work performed on public holidays.



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Australian Workers' Union

22 February 2017