

Fair Work Commission  
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East Sydney NSW2011  
By email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

05 May 2016

**Re: AM2014/226 AWU reply submissions on drafting and technical issues in the Exposure Draft for the for the *Electrical Power Industry Award 2016***

## **Background**

1. On 23 March 2016 the President, Justice Ross published a Statement directing parties to file submissions in reply to drafting and technical issues raised in Group 3 exposure drafts by 05 May 2016.
2. The following parties filed submissions on drafting and technical issues found in the Exposure Draft for the *Electrical Power Industry Award 2016* ('the Exposure Draft') as published on 15 January 2016:
  - Australian Workers Union (**AWU**)<sup>1</sup>
  - Construction, Forestry, Mining And Energy Union - Mining And Energy Division (**CFMEU**)<sup>2</sup>
  - Australian Industry Group (**AIG**)<sup>3</sup>
  - Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (**CEPU**)<sup>4</sup>
3. The AWU submissions in reply appear below.

## **Reply submissions**

### **CFMEU**

4. **Clause 6.5(d)** [paragraph 1]: We confirm our support for the separate submissions of the CFMEU<sup>5</sup> in relation to the replacement of the word 'attributes' with 'entitlements' at this clause – see paragraphs 5 and 6 of our submissions on the Exposure Draft.

<sup>1</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014226-sub-awu-190416.pdf>

<sup>2</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM2014226-sub-CFMEU-140416.pdf>

<sup>3</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014217andors-sub-aig-140416.pdf>

<sup>4</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014226-sub-cepu-140416.pdf>

<sup>5</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM2014220and226-sub-CFMEU-140416.pdf>

5. **Clause 5** [paragraphs 2-3]: We agree, the word ‘affected’ improves the expression of this clause. The intention of the facilitative clause is to involve affected employees, as opposed to any employees.
6. **Clauses 6.4(b) and 6.4(c)** [paragraphs 4-7]: We agree. The AWU have made the same proposal in relation to these clauses.<sup>6</sup>
7. **Clause 10.1** [paragraph 1]: We agree.
8. **Clause 10.2(b) (vi)** [paragraph 11]: There is a reference at this clause to ‘Schedule D – National Training Wage’ in relation to apprentices. The CFMEU say that the National Training Wage is not relevant to apprentices. We agree, and also note, as a matter of coverage at D.3.3 – Schedule D does not apply to the apprenticeship system.
9. **Clause 10.2(b) (vi)** [paragraph 12]: The CFMEU query why this clause does not apply to school based apprentices, and invite parties to discuss. The AWU note the same issue at D.6.3 in relation to school-based trainees. Both of these clauses say that time spent attending ‘training and/or assessment’ (as imposed by the training contract) is to be regarded as ‘time worked’ *except* for those under a school-based training contract. We are currently seeking feedback on this issue, but entertain the possible explanation:
  - a. The training and assessment components of the training contract are also necessary components of the senior school certificate – and thus they are not considered time worked. The exclusion from the payment of wages and other entitlements for ‘time worked’ is justified as school students are compensated with additional accreditation at school.
10. Despite our speculations, the AWU say – given that training and assessment are prescribed activities by the Registered Training Organisation in accordance with the training contract, then all trainees and apprentices should be compensated the same. We are unaware of any previous ruling or consideration of this issue by the Commission to date.
11. **Clause 10.7(b)** [paragraph 14]: This submission is consistent with our own, at paragraph 11 of our Exposure Draft submissions.
12. **Clause 14.7** [paragraph 14]: The CFMEU suggest this clause be amended so that payment of accrued leave on termination of employment is paid at the ‘minimum rate of pay’ rather than the ‘ordinary rate of pay’. This is consistent with the AWUs submissions in relation to this clause, given that there is no all-purpose allowance in this award. On reflection however, the AWU prefer the term ‘ordinary rate of pay’ as it incorporates payment of continuous allowances under clause 14.3 and the higher wage rate as provided at clause 10.7. We consider that this inference might be

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<sup>6</sup> AWU Exposure Draft Submissions, above n 1, 3.

overlooked however. In our submissions on the Exposure Draft we have provided alternative wording to ensure the effect of this clause is not inconsistent with the National Employment Standards.<sup>7</sup> If those submissions are accepted, the terms 'minimum rate of pay' or 'ordinary rate of pay' will not be utilised. This wording is restated here:

**14.7: Payment on termination of employment**

*[(a) If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee had the employee taken that period of leave.] ~~Upon termination of employment for any reason, an employee will be paid out accrued leave at the ordinary rate of pay applicable to the employee on the date when the employment terminated provided that, i~~*

*[(b) If the employee is a shiftworker, the employee will also be paid shift allowance and/or Saturday or Sunday penalty rates according to the employee's roster or projected roster.*

13. **Clauses 9.4 and 9.6** [paragraphs 15-16]: We agree. This is consistent with our own submissions.<sup>8</sup>
14. **Clause 9.7(d)** [paragraph 17]: We agree. This is consistent with our own submissions.<sup>9</sup>
15. **Clause 11.2(a)** [paragraphs 18-12]: We agree. This is consistent with our own submissions.<sup>10</sup>
16. **Clause 13.1** [paragraph 23]: The AWU were unsure what the question was asking in the Exposure Draft, and this is reflected in the discrepancy between our own submissions<sup>11</sup> and the CFMEUs. It appears now that the question asks whether or not overtime is reset each day, and we agree with the CFMEU that overtime is payable outside of ordinary hours, and that each day stands alone.
17. **Clauses 14.3 and 10.7(b)** [paragraphs 24-29]: We agree with the CFMEU. The payment of higher duties is a rate of pay not an allowance. The reference to the 'higher duties allowance' is confusing in this respect, and the inconsistency regarding payment while on annual leave as noted by the CFMEU and the AWU<sup>12</sup>, should be removed.
18. **Clause 14.7** [paragraphs 30-32]: We agree. This is consistent with our own submissions.<sup>13</sup>

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<sup>7</sup> Ibid, 17-18.

<sup>8</sup> Ibid, 9.

<sup>9</sup> Ibid, 10.

<sup>10</sup> Ibid, 12-13.

<sup>11</sup> Ibid, 14.

<sup>12</sup> Ibid, 15, 16.

<sup>13</sup> Ibid, 17-18.

19. **Clause 15.2** [paragraph 34]: We agree. This is consistent with our own submissions.<sup>14</sup>

## **CEPU**

20. **Clause 6.5(d)** [paragraph 2]: The CEPU and AWU both support the separate submissions of the CFMEU, as mentioned above at paragraph 4.
21. **Clause 14.7** [paragraph 3]: The CEPU agrees with the CFMEU – that the term ‘minimum rate of pay’ should appear at this clause. We repeat our reply submission as above at paragraph 12.
22. **Clauses 9.4 and 9.6** [paragraphs 5-6]: We agree. Per paragraph 13 above, the union parties have maintained consistency in relation to the operation of these clauses.
23. **Clause 9.7(d)** [paragraph 7]: We accept this submission. The AWU did not oppose the expression of this clause in our own submissions.
24. **Clause 11.2** [paragraph 8]: The CEPU agree with the CFMEU, which, as mentioned above at paragraph 15, is consistent with our own submissions.
25. **Clause 13.1** [paragraphs 9-13]: We agree. The CEPU provide a clear analysis of when overtime is payable.
26. **Clause 14.3** [paragraph 15-16]: As compared to the submissions of the CFMEU and the AWU, the CEPU do not definitively say that the inconsistency between these clauses must be rectified. The CEPU note that clauses 14.3 and 10.7 are not necessarily contradictory. This is true, provided an employee on higher duties is returning to their role involving higher duties after a period of annual leave. But, where this is not the case, the inconsistency is apparent. We repeat our submissions above at paragraph 17.
27. **Clause 15.2** [paragraph 18]: We agree, this is consistent with the CFMEU and the AWU per paragraph 19 above.

## **AIG**

28. **Clause 6.4(c)** [paragraph 301]: We agree. This is consistent with our own submissions.<sup>15</sup>
29. **Clause 6.4(e)** [paragraph 302]: We agree.
30. **Clause 6.5(d)** [paragraph 303]: All parties agree.
31. **Clause 6.5(e)** [paragraph 304]: We agree. This is consistent with our own submissions.<sup>16</sup>

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<sup>14</sup> Ibid, 19.

<sup>15</sup> Ibid, 3.

32. **Clause 6.6** [paragraphs 305-306]: We agree.
33. **Clause 7.4** [paragraph 307]: The AIG say that the higher duties allowance should not be referred to at clause 7.4(b) as it is not a relevant concept in this clause, and will confuse readers. We disagree. Clause 7.4 on the whole, acknowledges that employees will be required to perform duties that belong to classifications that are paid at rates both below and above their own. It appears relevant to refer to clause 10.7 as there may be an applicable payment, and protects against a potential underpayment. We do not see the reference as misleading. The AWU are also unsure on what basis the AIG object to the second sentence in clause 7.4(c). We do see this sentence as being vague, and would not necessarily object to the deletion of this sentence per AIGs submission.
34. **Clause 8.2(d)** [paragraph 308]: We agree.
35. **Clause 9.7** [paragraph 309]: The AIG prefer the wording in the current award in relation to this clause due to the substantive change in the entitlement. That is, an employer required to arrange 10 hours rest for employees between successive days of work where 'reasonably practicable' must now do so 'where possible'. The AWU do not have a strong view in relation to this clause, but also do not see that the entitlement has changed greatly.
36. **Clause 10.1** [paragraph 310]: We agree. This is in accordance with the CFMEU as above at paragraph 7.
37. **Clause 10.7(b)** [paragraph 311]: We agree. This is in accordance with the CFMEU and the AWU, as above at paragraph 11.
38. **Clause 14.4** [paragraph 312]: We agree.
39. **Clause 14.7** [paragraph 313]: The AIG agrees with the CEPU and CFMEU – that the term 'minimum rate of pay' should appear at this clause. We repeat our reply submission as above at paragraph 12.
40. **Clause 15.2** [paragraph 314]: All parties agree.

**END**



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<sup>16</sup> Ibid, 8.