

Fair Work Commission
Level 4, 11 Exhibition Street
Melbourne, Vic, 3000
Via email: AMOD@fwc.gov.au

20 January 2017

Re: AM2014/283 Registered and Licensed Clubs Award 2010

BACKGROUND

1. These submissions of the Australian Workers' Union (AWU) are made pursuant to the Amended Directions of Justice Ross issued on 21 December 2016 in AM2014/250 and others.
2. Parties are directed to file submissions on drafting and technical issues in the exposure drafts for Group 4D, 4E and 4F awards. The submissions that follow refer to the exposure draft for the *Registered and Licensed Clubs Award 2010* ('the Exposure Draft') as published on 22 November 2016.

DRAFTING AND TECHNICAL ISSUES

3. **Clause 11:** In response to the question posed by the Commission, we submit that a casual employee is an employee who is engaged and paid as a casual employee.¹ There are no exclusions under this Award to suggest that maintenance and horticultural employees are not covered by this definition.

- 3.1. As **Clause 24.1** is clear that it does not apply to maintenance and horticultural employees, **Clause 24.2** must apply for this classification. However, it is not specified in the table at **Clause 24.2** for what type of employee the penalty rate percentages apply to. We submit that the percentages noted in the table at **Clause 24.2** is for full-time and part-time

¹ Exposure Draft for the *Registered and Licensed Clubs Award 2010* published 22 November 2016, Clause 1.1

employees, and therefore any casual maintenance and horticultural employee is entitled to 25% casual loading on the ordinary hourly rate Monday to Friday and Saturday before 12 noon.

3.2. We submit that a row for casual maintenance and horticultural employees be added to the table at **Clause 24.2** that mirrors the table found at **24.1**, as below:

3.3.

	Monday to Friday and Saturday before 12 noon	Saturday after 12 noon	Sunday	Public Holiday
	% of	ordinary	hourly rate	
Full-time and part-time employees	100%	150% for the first 2 hours then 200%	200%	250%
Casual employees (inclusive of the 25% casual loading)	125%	150% for the first 2 hours then 200%	200%	250%

4. We note that there is a typographical error at **Clause 11.3** – “casual” is written as “causal”.
5. **Clause 13.1**: In response to the question posed by the Commission, we submit that **Clause 13.1** makes no distinction between junior employees that handle liquor and those who don’t. The only criterion that a junior employee must meet to be paid at the adult rate of pay for the appropriate classification is to be “employed in the bar or other places where liquor is sold”. Therefore, **Clause 13.1** applies to both the junior waiter and the junior kitchen hand in the example in the Exposure Draft.

6. We submit that **Clause 15.8(g)** is no longer required.
7. **Clause 18.2:** In response to the question posed by the Commission, we submit that the minimum rates of pay as set out in the table at **Clause 18.3** are not inclusive of the first aid allowance. The wording in **Clause 18.2** is problematic as it may be read in a way that results in the first aid allowance not being paid on top of the minimum rates of pay.
 - 7.1. We seek an amendment to the wording of **Clause 18.2**, and suggest the following:
 - 7.1.1. “An employee’s rate of pay ~~is inclusive of the award rate~~ **as** set out in this clause **must also include** ~~and~~ the additional allowance (where applicable) for first aid **which is payable for all purposes** set out in clause 19.2(b).”
8. **Clause 18.4:** We submit that the rate for casual fitness instructors in **Clause 18.4(a)** is subject to penalties in **Clause 24.1**. The table under **Clause 24.1** includes penalty rates for all employees except maintenance and horticultural employees, and has a distinct row for casual employees.
9. **Clause 19.3:** It is our understanding that **Clause 19.3(c)(i)** is intended to cover tool allowance and reimbursement processes for the classifications of employees named – cooks and maintenance and horticultural employees. **Clause 19.3(c)(ix)** is a general provision for all classifications of employees, and outlines the process of reimbursement in circumstances that fall outside of those covered by **Clause 19.3(c)(i)**.
10. We note that there may be some ambiguity between these two provisions as **Clause 19.3(c)(ix)** is expressed to apply to any employee, and therefore has the capacity to apply to those classified as cook and maintenance and horticultural employees notwithstanding that there is a provision expressly for those two employee classifications.
11. **Clause 24.4:** This clause clearly states that the allowance is paid “per hour or any part of an hour”. Therefore, they are payable in units of whole hours only. In response to the example proposed by the Commission, the employee would be entitled to 3 hours of the penalty rate (\$6.18) for working 2.5 hours into the penalty period.

Yours faithfully,

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

Zachary Duncalfe
NATIONAL LEGAL OFFICER
The Australian Workers' Union