

Fair Work Commission
Terrace Tower, 80 William Street
East Sydney NSW 2011
By email: amod@fwc.gov.au

23 September 2016

Re: Submissions regarding Revised Exposure Drafts for 1A and 1B Awards

Background

1. On 9 September 2016 the Fair Work Commission published revised Exposure Drafts for awards falling within the 1A and 1B groupings of the 4 yearly review of modern awards.
2. Interested parties were directed to file submissions identifying any perceived errors with the latest amendments by 23 September 2016.
3. The submissions of The Australian Workers' Union (AWU) appear below.

Aluminium Industry Award 2015

4. Clause 11.1 (a): This should read: "...while they are on annual leave" based on the Full Bench Decision in *4 yearly review of modern awards* [2015] FWCFB 4658 at paragraph [91].

Asphalt Industry Award 2015

5. Clause 6.4 (d): The term "minimum hourly rate" should be replaced with "ordinary hourly rate" on the basis of the Full Bench's Decision in *4 yearly review of modern awards* [2015] FWCFB 6656 at paragraph [110]. The Asphalt Industry Award 2015 has two all-purpose allowances in clause 11.

Cement, Lime and Quarrying Award 2015

6. Clause 11.2 (a): This should read: "...while they are on annual leave" based on the Full Bench Decision in *4 yearly review of modern awards* [2015] FWCFB 4658 at paragraph [91].

Concrete Products Award 2015

7. Clause 11.1: The reference to “see 0” should be “see Schedule C”.
8. Schedule C.3: The deletion of the word “meal” is not necessary given the entitlement does apply on a per meal basis and the remaining provisions in the table have reference to the frequency of the payment.

Cotton Ginning Award 2015

9. Clause 6.7: This clause does not clearly specify that a seasonal employee is entitled to receive the other entitlements prescribed in the award for a full-time or part-time employee depending on the hours they are engaged to work.

Premixed Concrete Award 2015

10. Schedule B.3: The deletion of the word “meal” is not necessary given the entitlement does apply on a per meal basis and the remaining provisions in the table have reference to the frequency of the payment.

Salt Industry Award 2015

11. Clause 13, 14 and Schedule B: In its 23 December 2014 Decision the Full Bench determined that the industry allowance which is payable for all-purposes would be added after penalty and loading calculations because the current *Salt Industry Award 2010* prescribes that calculations are undertaken on the “ordinary hourly base rate of pay”.
12. However, the Full Bench subsequently determined that the standard approach for all-purpose allowances, whereby the allowance is added before any penalty or loading calculations, would be adopted in other awards which also use the term “ordinary hourly base rate of pay”.
13. The Full Bench stated the following at paragraph [56] of its Decision in *4 yearly review of modern awards* [2015] FWCFB 7236:

The expression ‘ordinary hourly base rate of pay’ is not defined in the current award but, consistent with the July 2015 decision the expression is to be interpreted to mean the ordinary hourly rate of pay derived from the employee’s minimum weekly rate plus applicable all purpose allowances. Hence, contrary to Ai Group’s submission, we are not persuaded that the approach taken in the Exposure Draft is a departure from the current award.

14. The Full Bench applied the same outcome in relation to the *Mining Industry Award 2010* at paragraph [141].

15. On this basis, we submit the Salt Industry Award 2015 should be updated to essentially apply the general decision reached by the Full Bench about the application of all-purpose allowances in *4 yearly review of modern awards* [2015] FWCFB 4658 at paragraph [47].

A handwritten signature in black ink, appearing to read 'SC', is positioned above the typed name.

Stephen Crawford

SENIOR NATIONAL LEGAL OFFICER