

24 March 2017

The Hon. Justice Ross, President
Fair Work Commission
Level 4, 11 Exhibition Street
Melbourne, Vic, 3000
Via email: chambers.ross.j@fwc.gov.au
Cc: amod@fwc.gov.au

Dear Justice Ross,

Re: AM2014/305 – Penalty rates – Hair and Beauty Industry Award 2010 – Registered and Licensed Clubs Award 2010

Background

We refer to the recent Decision on 23 February 2017 – *4 Yearly review of modern awards – Penalty Rates [2017] FWCFB 1001* ('**the Decision**').

The Full Bench determined to re-open proceedings to variously review the penalty rates contained in the *Hair and Beauty Industry Award 2010* (**Hair and Beauty Award**) and the *Registered and Licensed Clubs Award 2010* (**Clubs Award**).

The Australian Workers' Union (**AWU**) rejects both courses of action and briefly responds as set out below.

Hair and Beauty Industry Award

The *Hair and Beauty Award* was the subject of multiple claims to reduce penalty rates by the Australian Business Industrial and the New South Wales Business Chamber (**ABI**) and the Hair and Beauty Australia Industry Association (**HABA**). These claims were withdrawn in 2016. However, the Full Bench Decision at [2059] specifically identified Sunday penalty rates and penalty rates applicable to casuals as 'appropriate' to be reviewed.

The HABA indicated on 23 March 2017 that they propose to lead the employer's case to reduce penalty rates under the Hair and Beauty Award.

To the extent that any change to the Sunday rates; and / or weekend overtime rates; and / or public holiday rates should be subject to a reduction whether by the Fair Work Commission on its own motion or by an employer organisation, the AWU vehemently opposes such change.

We rely on the content of our submission of 6 October 2015 in this matter and will further supplement this material should these proceedings continue.

Registered and Licensed Clubs Award

Although the proponent party Clubs Australia Industrial (**CAI**) were unable to establish a sufficient case, the Commission has determined to re-open the penalty rates proceedings for the *Clubs Award* and has expressed 2 options at [996-1000]:

- Option 1: Revoke the Award and vary coverage of the *Hospitality Industry (General) Award* to accommodate the lost coverage (the Commission express a provisional view this option has merit).
- Option 2: Re-open the matter to allow parties to advance a properly based merits case.

Parties were invited to express a view as to the conduct of such proceedings by 23 March 2017. The AWU supports the retention of the two separate awards and rejects either course of action provisionally proposed.

Under the Clubs Award, the AWU has a comprehensive occupational interest in Queensland and a specific interest in maintenance and horticultural employees nationally. We note that the CAI's case did not extend to horticulture and maintenance occupational streams. To revoke the Clubs Award without retaining the maintenance and horticulture weekend rates would have the unintended effect of reducing penalty rates for these occupations.

Due to the unclear nature of the scope of these proceedings, the AWU may seek to further supplement these submissions in response to the CAI or any other proponent party.

Yours faithfully,



Roushan Walsh

NATIONAL LEGAL OFFICER