

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

28 January 2015

Re: AM2014/200 Exposure Draft for the *Aquaculture Industry Award 2014*

AWU submissions

The Australian Workers' Union (AWU) submits the following in relation to the Exposure Draft for the *Aquaculture Industry Award 2014*:

1. **General issues:** We have not included submissions on drafting and technical issues already dealt with in the Full Bench Decision on 23 December 2014 on the basis that the Exposure Draft will subsequently be amended so it is consistent with this Decision.
2. **Clause 3.1:** In an apparent attempt to simplify the wording in the exposure draft, the words "and operations ancillary thereto including initial preparation for market" appearing in clause 4.1 of the exposure draft have been replaced with "and related operations including preparation for market". We are concerned the term "related operations" may be too broad and propose the following wording:

This industry award covers employers throughout Australia engaged in the breeding, production, farming and related harvesting of fish, shellfish, crustacean and marine vegetation and support functions for these primary activities including initial preparation for market, and their employees in the classifications in Schedule A – Classification Definitions to the exclusion of any other modern award.

3. **Clause 6.3:** This clause should be amended to state the following to clarify that the provision is concerned with ordinary hours:

A full-time employee is engaged to work an average of 38 ordinary hours per week.

4. **Clause 6.5 (b) (ii):** The Exposure Draft has substantively changed the current award because it states the casual loading is in lieu of "other entitlements of

full-time or part-time employment". The wording from clause 10.3 (d) of the current award should be retained.

5. Clause 8.2 (c): There is a typo - this clause should read "excess 38 hours per week on average..."
6. Clause 8.4 (a) (i): This clause should refer to the employer's right to fix daily hours for day workers "within the spread of hours referred to in clause 8.2 (a) and (b)" so the entitlement to a 5 day week is clearly preserved.
7. Clause 8.4 (c) (i): This clause should be amended to state: "maximum ordinary hours will be 10 per day or shift" to avoid ambiguity regarding night shifts which span two days.
8. Clause 10.7 (a): We are concerned this wording indicates all duties of the higher position need to be performed for a higher duties entitlement. We submit this should be amended to state:

An employee required by the employer to perform work at a higher classification level for more than two hours, will be paid for all work done on that day at the rate applicable for that higher level.

9. Clause 11.2 (a): In response to the question posed in the Exposure Draft, we submit part-time employees are already entitled to the first aid allowance if the criteria is satisfied because of clause 6.4 (a) (iii). However, a casual employee should also receive this allowance if they happen to be appointed by their employer as the first aid officer. As a result, the clause should be amended to read:

An allowance of \$2.54 per working day will be paid to any employee holding first aid qualifications from St John Ambulance and appointed by the employer to perform first aid duty.

10. Clause 11.2 (b) and 11.3 (a): There is no ambiguity about how these provisions interact. Clause 11.2 (b) prescribes a diving allowance which is effectively a disability-type allowance to all employees performing diving duties. In the event that an employee performing diving duties is required to supply their own diving equipment, they receive the disability allowance in clause 11.2 (b) plus the expense related allowance prescribed in clause 11.3 (a) which, for example, compensates for wear and tear on their equipment. An employee who is provided with diving equipment by their employer only gets the disability allowance.

11. Clause 11.3 (b): Our understanding is (i), (ii) and (iii) prescribes separate and additional entitlements. Specifically:
- (i) This entitles the employee to be supplied with a meal or paid an allowance of \$15.69 if they are required to work more than 2 hours of overtime.
 - (ii) Where the length of overtime necessitates a second or subsequent meal and the employee was not advised of this on the previous day or earlier, the employer must provide another meal or pay a further allowance of \$15.69.
 - (iii) If the employee is advised of overtime and hence brings appropriate meals to work but then the overtime is cancelled, they are entitled to \$15.69 per surplus meal provided.
12. Clause 11.3 (d) (ii): We do not consider the term “ordinary rates of pay” needs to be amended.
13. Clause 11.3 (d) (ii): There is a typo – “an” instead of “and” in the first dot point.
14. Clause 11.3 (d) (iii): In response to the question posed in the Exposure Draft, we submit trip time does include waiting time because an employee who has reported for duty as directed should not be forced to wait around for the transport without compensation.
15. Clause 13.2: Our view is the intent of the provision is for the spread of hours to be shifted i.e. it can be varied by agreement to be 4am to 6pm or 6am to 8pm. This issue has arisen in relation to the review of the Manufacturing Award 2010 and other awards.
16. Clause 14.2 (b) and 14.3: If it is considered desirable to further clarify that casual employees do not receive the casual loading on overtime in clause 14.2 (b), this should also be included in clause 14.3. Alternatively, the words should be omitted from both clauses because clause 6.5 (c) already deals with this issue.
17. Clause 14.6 (b): The following words should be inserted at the end of the clause: “The 200% is to be paid until the employee is relieved from duty”. This is the standard overtime rate for continuous shift workers anyway but omitting these words may create confusion given their inclusion in (a) and (c).
18. Clause 14.8 (b): In response to the question posed in the Exposure Draft, we submit this clause should be amended to read:

An employee who works so much overtime that they will not have at least 10 consecutive hours off duty between completing the overtime and commencing ordinary work must, subject to this sub-clause, be released after completing such overtime until they have at least 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

This wording clarifies the 10 hour rest period commences when the overtime finishes and can apply equally to day and shift workers - the current wording could be problematic for a night shift worker whose ordinary hours, for example, end at 4am and then commence again at 8pm on the same day.

Similarly, we submit the following wording in clause 14.8 (a) would eliminate confusion for night shift workers:

When overtime work is necessary it must, wherever reasonably practicable, be arranged so that an employee has at least 10 consecutive hours off duty after finishing the overtime.

19. Clause 20.2: There is a typo in the fourth line, this should read “the employer may withhold from any money due”.
20. Schedule B.1.1: Unfortunately, the percentage identified for day work ordinary hours on a Saturday should be 125% and 150% for a Sunday – the rates are correctly calculated on this basis.
21. Schedule B.1.2: The Public Holiday rate table erroneously refers to different rates depending on whether all hours are worked on the holiday or only the major portion. The 250% column should be headed “Non-continuous shift worker” and the 200% column “Continuous shift worker” – see clause 13.3 (a).
22. Schedule B.2.2: The same issue identified directly above arises – the headings should refer to non-continuous and continuous shift work.
23. Schedule B.3.2: The table needs to clarify that the overtime rates in the first four columns are for non-continuous shift workers.

Unfortunately, the overtime rate for continuous shift workers on a public holiday is 200% - see clause 14.6 (b).



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