

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

05 February 2015

Re: AM2014/201 - Exposure Draft for the *Corrections and Detention (Private Sector) Award 2014*

AWU submissions

The Australian Workers' Union (AWU) submits the following in relation to the Exposure Draft for the *Corrections and Detention (Private Sector) 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 2014¹ on the basis that the Exposure Draft will subsequently be amended so it is consistent with this Decision.
2. **Clause 7 – Classifications:** We agree that the Exposure Draft should include reference to Schedule C in clause 7.1.
3. **Clause 8.2 – Ordinary hours of work and roster cycles – day workers:** We submit the span of ordinary hours in clause 8.2(a) applies to part-time day workers. This is evident by the inclusion of clause 6.4(b)(iii) which provides that part-time employees:

¹ 4 yearly review of modern awards [2014] FWCFB 9412

“receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work” (emphasis added).

4. **Clause 10.1 – Minimum wages:** The preliminary wording of clause 10.1 of the exposure draft has been changed from the wording in the current award. We are concerned that the new wording could be interpreted to mean that an employer may not pay their employees above the award rate. We submit these preliminary words be amended to:

a. *“An employer must pay adult employees at least the following minimum wages for ordinary hours worked by the employee.”*

5. Further, clause 10.1 now applies to all adult employees, not just full-time employees. The heading in the second column of the tables in sub-clauses 10.1(a) and (b) should be amended to read *“Minimum weekly rate (38 hours)”* to clarify that the minimum weekly rates do not apply to casual and part-time employees.

6. **Clause 11.2(b)(i) and (ii) – Dog handler’s allowance:** The words *“where an employee is responsible for maintaining an animal”* in the current award have been changed to *“where an employee is required to maintain an animal”*. We prefer the wording of the current award as it more appropriately corresponds to the employer’s obligation in the first dot point of sub-clause (b)(ii) and because changing the word “responsible” to “required” alters the nature of the employee’s obligation.

7. Further, the fifth dot point in sub-clause (b)(i) should be amended to the wording of the current award, being:

“ensuring the safety and security of the animal”

8. **Clause 11.2(b)(ii) – Dog handler’s allowance:** We do not object to the allowance of 5% being expressed as a weekly allowance, although we note that wages are paid fortnightly.

9. **Clause 14.3 – Time off instead of payment:** Time off instead of payment for overtime is accrued at overtime rates under this clause. For example, where an employee is entitled to 200% of the minimum hourly rate under clause 14.2 for an hour of overtime worked, that employee is entitled to 2 hours off upon approval of an application under clause 14.3.

10. This is highlighted by the fact that, on termination of employment, *“the total value of all outstanding accrued time off”* is to be paid to the employee under clause 14.3(c). If time off were accrued on an “hour for hour” basis, the total value payable under clause 14.3(c) would be significantly less than the amount payable under clause 14.2.

11. Relevantly, public sector employees working in this industry are granted time off in lieu of overtime on the following terms:

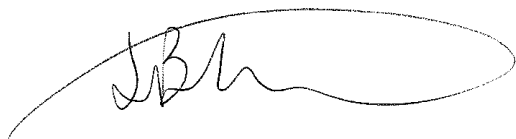
“Time off in lieu: Time off may be granted in lieu of overtime provided for under this award where the employer and the employee agree, on an “hour for hour” basis with an entitlement to a residual payment, or on a penalty time basis. For example, 3 hours time off plus 3 hours pay at half time, in lieu of 3 hours overtime at time and a half, or alternatively 4 1/2 hours time off in lieu of pay.”²

² Australian Public Sector Award 1998, clause 24.7

12. Because clause 14.3(d) precludes any residual payment arrangement by making it clear that “[n]o time off will be granted in respect of any overtime for which payment is made”, time off instead of payment for overtime must only be calculated at overtime rates.

13. **Clause 14.5 – Call-back:** The “appropriate rate” will depend on the circumstances in which the call-back is worked. If the work performed by the employee during the call-back period is consistent with payment for overtime in accordance with clause 14.2, then the “appropriate rate” will be the relevant overtime rate. However, the “appropriate rate” may be the ordinary hourly rate, provided the call back period falls within the employee’s ordinary working hours (including span of hours, maximum daily hours and weekly averaged hours). The “appropriate rate” may also be a penalty rate if the call-back occurs on a Sunday, public holiday etc.

14. **Clause 18.3 – Public Holidays:** Change the word “holidays” to “holiday” in clause 18.3. This appears to be a typo.



James Blaxland
National Legal Officer