

**Section:** s.156 - 4 yearly review of modern awards

**Title of the matter:** 4 yearly review of modern awards – *Corrections and Detention (Private Sector) Award 2010*

**Matter number:** AM2014/201

### **The Australian Workers' Union's outline of submissions**

We refer to the Amended Directions of His Honour Justice Ross on 6 May 2015<sup>1</sup>. In accordance with the Amended Direction the Australian Workers' Union (AWU) files its comprehensive written submissions on the technical and drafting issues related to the exposure draft of the *Corrections and Detention (Private Sector) Award 2010*. We also rely on our previous written submissions filed for this award.

We have not included submissions on drafting and technical issues dealt with in the Full Bench Decision of 23 December 2014<sup>2</sup> and 13 July 2015<sup>3</sup> on the basis that the exposure draft would subsequently be amended so it is consistent with the Decisions.

1. Clause 7 Classifications: Page 8 of the exposure draft asks whether the,

*“reference in clause 7.1(c) to Schedule C does not appear in the current award. It appears that its exclusion may have been an oversight, as the schedule was added by way of a variation determination ([2013] FWC 2482)”*

*Parties are asked to confirm that the reference to clause 7 (as amended) in the coverage provision in clause 3.1 is correct”.*

2. In response to the question we state that the exposure draft should include reference to Schedule C in clause 7.1.

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<sup>1</sup>s.156 - 4 Yearly Review of modern awards - group 2 awards (AM2014/198 and others); Amended Directions (Justice Ross) (6 May 2015)

<sup>2</sup> [2014] FWCFB 9412

<sup>3</sup> [2015] FWCFB 4658

3. Clause 8.2 Ordinary hours of work and roster cycles – day workers: At clause 8.2 of the exposure draft on page 9 the parties are asked whether the span of ordinary hours in clause 8.2(a) applies to part time employees. It is our submission that the span of ordinary hours in clause 8.2(a) applies to part time employees.
4. Clause 8 of the exposure draft relates to ordinary hours of work. Sub clause 8.2 outlines the ordinary hours of work and roster cycles for day workers. Sub clause 8.3 deals with ordinary hours of work and roster cycles for shiftworkers. Clause hence clause 8.2(a) applies to part time employees who are not shift workers.
5. Additionally, clause 14.2(a) Payment for overtime of the exposure draft makes it evident that the ordinary hours at clause 8 apply to part time employee as it says,

*“A full-time or part-time employee is paid at overtime rates for any work done outside the spread of hours or rostered hours set out in clause 8”.*  
(our emphasis).

6. Furthermore, clause 6.4(b)(iii) of the exposure draft also makes it evident that 8.2(a) applies to part time employees as it provides that part-time employees:

*“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).

7. Clause 10.1 Minimum wages: The preamble of clause 10.1 of the exposure draft has been changed from the wording in the current award which may have unintended consequences. Therefore, we submit the preamble be amended as follows, so it reflects the current wording of the award:

*“An employer must pay adult employees not less than the minimum wages of pay applicable to the employee’s classification for ordinary hours worked by the employee”*

8. 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.

9. 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”*

10. 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 in accordance with clause 10.2(a) *Payment of wages, wages are paid fortnightly.*
11. 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.
12. 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.
13. 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."<sup>4</sup>*

14. 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.
15. Clause 14.5 Call-back: at page 19 of the exposure draft the parties are asked if the "appropriate rate" in clause 14.5 is the minimum hourly rate or the overtime rate. Clause 14.5 says,

*An employee required to return to the employer's premises or any other location at which they are required to perform duty, after they have ceased duty for the day and left the location at which they were performing work must be paid at the appropriate rate for a minimum of (our emphasis).*

*(a) three hours, if recalled on Monday to Saturday; and*

*(b) four hours if recalled on a Sunday or public holiday..*

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<sup>4</sup> *Australian Public Sector Award 1998, clause 24.7*

16. Clause 6.4(c) and 6.4 (g) - Part-time employment specifies the following:

*“(c) At the time of engagement the employer and the part-time employee will agree in writing, on a regular pattern of work, specifying at least:*

*(i) the hours worked each day;*

*(ii) which days of the week the employee will work; and*

*(iii) the actual starting and finishing times each day.*

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*(g) All time worked in excess of the hours as mutually arranged will be overtime and paid for at the rates prescribed in clause 16—Overtime and penalty rates (our emphasis).*

17. Clause 6.4(g) requires overtime payments for all time worked in excess of hours as mutually arranged. The hours are mutually arranged under 6.4(c) at the time of engagement. Subsequently, if an employee is called back to work, it will constitute overtime payments as it goes beyond the hours that had been mutually arranged when the employee was initially engaged.

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



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