



19 October 2015

President Ian Ross  
Fair Work Commission  
Level 4, 11 Exhibition Street  
Melbourne 3000

By email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

Dear President Ross,

**Four Yearly Review of Modern Awards – Corrections and Detention (Private Sector)  
Award 2010 – AM2014/201**

We refer to the matter above. United Voice has not filed submissions in this matter. We note that the opportunity to make submissions set out in the directions issued on 6 May 2015 has now passed. However, United Voice has a significant interest in this Award and consider ourselves a party. We seek leave to make the following submissions. We believe our submissions reflect those already made by the AWU and therefore should not cause undue prejudice to any Party.

Where we reference a clause, we refer to the clauses of the Exposure Draft, unless otherwise stated.

**Clause 6.4 (b) (i)**

1. We agree to the insertion of the words 'ordinary hours' after number '38'.

**Clause 7.1**

2. We agree that the reference to clause 7 in the coverage provision in clause 3.1 is correct.

**Clause 8.2 (a)**

*Application of clause 8.2 (a) to part-time employees*

3. At clause 8.2 parties are asked whether the span of ordinary hours applies to part time employees. Clause 8.2 does apply to part-time employees.
4. United Voice agrees with the AWU's submission that the span of ordinary hours in Clause 8.2(a) applies to part-time day workers. We support their submission that this is evidenced by clause 6.4(b)(iii) which provides that part-time workers are entitled to the pro rata entitlements of a full time worker. We note the submission of 28 August 2015 by the AIG Group that the application of clause 6.4 (b) (iii) to 8.2 (a) is ambiguous because clause 6.4 (b) (iii) 'contemplates that certain award terms and conditions apply on a

pro-rata basis' and the 'span of hours cannot be applied on a pro-rata basis'. This misinterprets of clause 6.4 (b) (iii) by placing an undue emphasis on the words 'pro-rata basis'. The key words of that sentence are 'equivalent pay and conditions to those of full-time employees'. The words 'on a pro-rata basis' qualify that entitlement where they entitlement derives from the number of hours worked.

5. Several clauses in the agreement provide entitlements which depend on the span hour of hours provided for in clause 8.2 (a). These entitlements apply to full-time and part-time employees.
6. Firstly, the definition of shiftworker applies to both full time and part time employees. This has implications when interpreting other clauses of the Award. Clause 8.3 (a), defines a 'shiftworker' as:

'an employee who works a roster cycle where their ordinary hours are rostered outside the span of hours referred to in 8.2(a)' [emphasis added].

7. There is no express exception to this clause, nor is there an alternative definition of shiftworker for the purposes of determining ordinary hours. The defining feature of a shiftworker is that they are rostered to work outside the span of hours in 8.2 (a). Further, there is no separate definition of shiftworker that applies to a part-time employee. Therefore, there is no reason to suggest that this clause does not apply to part-time employees. Consequently, clause 8.2 (a) applies to part-time employees at least in so far as it applies in determining who is and who is not a shiftworker. Further, the table at 8.4 clearly provides for a maximum shift length for part-time shiftworkers.
8. We note the Fair Work Commission's question to the AI Group at the hearing on 7 October 2015 in regard to the 'spans' in clause 13.1. Clause 13.1 provides for several 'spans' which are defined by periods of time. A 'Day span' is defined as '0600 hrs to 1800 hrs Monday to Friday'. Clause 13.3 provides penalty rates for ordinary hours worked in the different spans and there are no penalties for hours worked during a day span. The Day span does not define who is a day worker, as a day worker could work their ordinary hours between 6.00 am and 6.00 pm on a Saturday or a Sunday. However, ordinary hours worked before 6.00 am or after 6.00 pm on weekdays, the 'night span', are paid at a penalty rate. The inference is that other hours worked in that period of time are paid at overtime rates.
9. The interpretation of clause 8.2 (a) advanced by the union parties is reinforced by the words of clause 14.2 (a), which reads:

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

10. When read in conjunction with 13.1 it becomes clear that there are two categories of permanent employee under this Award. Shiftworkers, defined by having ordinary hours rostered outside of the span of hours in 8.2 (a) and are paid penalty rates for ordinary hours worked during night spans. Employees whose ordinary hours are rostered between 6.00 am and 6.00 pm and who therefore receive overtime for hours worked outside of that spread fall into a second category. As 8.2 (a) clearly states the span of ordinary hours of work in that clause applies to 'employees other than shiftworkers'.
11. There is no evidence to suggest that the second category is limited to full-time employees. If a part-time employee's ordinary hours are rostered between 6.00 am and 6.00 pm, they will be a day worker. To say then that span of hours in clause 8.2 (a) does not apply to them makes little sense.

*AI Group's submissions to amend Clause 8.2 (a) to reflect the current Award*

12. We do not oppose the AI Group's submission that the words 'any day of the week' be reinserted after '6.00 pm' at clause 8.2. We agree that this would assist the reader to understand that ordinary hours can be rostered on any day of the week, as is the case under the current Award.

13. We oppose the AI Group's submission that the reference to clause 8.1 should be deleted from clause 8.2 (a). The reference is unlikely to lead to confusion and in fact clarifies how the clause operates.

**Clause 9**

14. At clause 9, the parties are asked if the rest breaks in clause 9.7 are in addition to or in substitution for the meal breaks in clause 9.1. United Voice believes that the breaks referred to in clause 9.7 are in substitution for the unpaid meal break in clause 9.1.

**Clause 10**

15. We do not oppose the AWU's claim to amend the words of 10.1 to more accurately reflect the entitlement in the current Award.

**Clause 11.2 (b) (i)**

16. We support the AWU's submissions regarding this clause. We believe the proposed amendments will preserve the entitlement in current Award.

**Clause 11.2 (b) (ii)**

17. We see no reason why the allowance in clause 11.2 (b) (ii) cannot be expressed as a weekly allowance.

**Clause 11.3 (c) (iv)**

18. We do not oppose the AIG's proposal to revert to the wording of the exposure draft.

**Clause 14.3**

19. This claim is properly a matter for the Award Flexibility Full bench.

**Clause 14.5**

20. At clause 14.5 the parties were asked if the 'appropriate rate' referred to in clause 14.5 was the ordinary rate or the overtime rate. The appropriate rate may be either the overtime rate or the ordinary rate depending on the circumstances of the call-back. The 'appropriate rate' may be the ordinary rate, the overtime rate or a penalty rate depending on the circumstances.

**Clauses 15.1 and 15.2 (a)**

21. We agree that clause 15 should be amended in line with the Decision [2014] FWCFB 9416.

**Clause 18.3**

22. We agree with the AWU's submission that the word 'holidays' should be replaced with 'holiday'.

Yours sincerely

A handwritten signature in black ink, appearing to read "Michael Robson". The signature is fluid and cursive, with a long horizontal stroke at the end.

**Michael Robson**  
National Industrial Officer  
United Voice