

**STRONGER
TOGETHER**

NATIONAL OFFICE

Level 10, 377-383 Sussex Street Sydney NSW 2000

T: (02) 8005 3333 F: (02) 8005 3300

E: members@awu.net.au W: www.awu.net.au

Members Hotline: 1300 885 653

Scott McDine National Secretary



ABN 28 853 022 982

Fair Work Act 2009

FAIR WORK COMMISSION

s. 156 – 4 yearly review of modern awards

OUTLINE OF SUBMISSIONS

Revised Exposure Draft and Draft Report:

Corrections and Detention (Private Sector) Award 2010 (AM2014/201)

Horse and Greyhound Training Award 2010 (AM2014/205)

The Australian Workers' Union's outline of submissions

We refer to the directions of His Honour Justice Ross in the revised draft reports dated 30 October 2015¹. His Honour has directed the parties to respond to the revised draft report and the exposure draft dated 30 October 2015 for the *Corrections and Detention (Private Sector) Award 2010* and the *Horse and Greyhound Training Award 2010*.

Corrections and Detention (Private Sector) Award 2010

Revised exposure draft

1. The Australian Workers' Union (AWU) notes that it has had the benefit of considering the submissions made by United Voice in these proceedings (dated 13 November 2015) and that we support those submissions.

Clause 10.1 – Minimum wages

2. The tables at 10.1 should contain a column for casual hourly rate.

Clause 11.3(a)(i) – Expense related allowances – Meal allowance

3. There appears to be a typographical error in this clause. We suggest including the word underlined below, so it reads as follows,

“if required by the employer to take a meal break at their post”

Clause 14.5 – Call-back

4. The exposure draft asks whether 'appropriate rate' in the clause refers to minimum hourly rate or overtime rate. The AWU had responded to this question in our submission dated 5 February 2015 at [13]² and the Australian Industry Group (AIG) agreed with the AWU. However, we withdraw paragraph [13] of our 5 February 2015 submissions.
5. We submit that the 'appropriate rate' is the overtime rate.
6. The call-back provision falls under the overtime clause, that is, it is a sub clause of clause 14 – *Overtime*.

¹s156 - 4 yearly review of modern awards - group 2 awards (AM2014/201 and AM2014/205);

² 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.

7. The words of 14.5 state,

“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.....”

8. The words of 14.5 clearly illustrate that a call back entitles the employee to overtime rates, because they have to return to work after ceasing work for the day. For example, 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.

(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).

9. 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.

10. To ensure that clause 14.5 – *Call-back* is unambiguous we submit that the wording of the current award be retained, with the inclusion of the term ‘overtime’ as follows:

*“If an employee is 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 have left the location at which they were performing work, the employee must be paid a minimum payment of three hours at the appropriate **overtime** rate for each such attendance, if they are recalled on a Monday to Saturday inclusive, or for four hours at the appropriate **overtime** rate if recalled to duty on a Sunday or public holiday”.*

Horse and Greyhound Training Award 2010

Revised draft report

Clause 6.5(e)(ii) - Casual Loading

11. The Australian Trainers' Association (ATA) claims that penalty rate payments for work on a public holiday as per clause 26.3 of the current award do not apply to casual employees. The ATA basis this claim on an advice received by the Fair Work Ombudsman (FWO) on 15 August 2011.

12. The FWO in its advice to the ATA relies on clause 10.4(c) of the current award, which says (emphasis added),

“A casual employee working ordinary time must be paid the appropriate minimum wage prescribed in clause 13—Classifications and minimum wages, calculated hourly plus a loading of 25% but will not be entitled to any of the leave or public holiday benefits applying to full-time employees. The loading constitutes part of the casual employee’s all-purpose rate”

13. Clause 10.4(c) has been derived from the pre-reform *Horse Training Industry Award 1998* (AP783476CRV).

14. The pre-reform award says, (emphasis added):

Clause 10.5.10 – Casual employees

“A causal employee shall not be entitled to the benefits of clauses 20 - Annual leave, 21 - Personal leave and 23 - Public holidays, of this award”.

Clause 23.6 – Public holidays

“If an employee works on any of the holidays mentioned or any day or days by Act of Parliament or Proclamation substituted for such holidays and the employer and employee have not agreed to mutually substitute such holiday for another day the employee shall be paid single time in addition to his ordinary rate of pay, or alternatively if the employer agrees, an extra day shall be added to his annual leave”.

15. The pre-reform award dates before the Metal Industry Award decision 2000³, where the Full Bench of the Commission determined that (emphasis added),

*“**[196]** For the reasons we have given in the preceding Sections, we are satisfied that paid leave; long service leave; and a component covering*

³ Metal, Engineering and Associated Industries Award, 1998 Print T4991 at [196]

differential entitlement to notice of termination of employment and employment by the hour effects, should constitute the main components to be assessed in determining casual loading for the Award”.

16. The Metal Industry Award decision 2000 makes it clear that penalty rates on public holidays do not constitute a component of the casual loading.

17. Furthermore, there are no modern awards that exclude casual employees from receiving penalty rates for work on a public holiday. An award, which excludes casual employees from receiving penalty rates for work on public holidays, would not meet the modern awards objective (specifically s134 (da)(iii) of the Act). Therefore, deletion of clause 6.5(e)(ii) from the exposure draft, which appears at clause 10.4(c) of the current award, is crucial.

Clause 6.2 – Types of employment

18. The Commission has proposed the following wording,

“At the commencement of their employment the employer will inform each employee of their type of employment (i.e. full time, part time or casual)”.

19. The AWU does not object to the wording suggested by the Commission.

Revised exposure draft

Clause 6.4(a)(iii) – Part time employees

20. The words “ *who do the same kind of work*” should be deleted as they are not necessary or in the current award.

Clause 6.6 casual conversion

21. Clause 10.4(e) of the current award says,

“An employee must not be engaged or re-engaged as a casual employee under this clause to avoid any obligation under this award”.

22. Clause 10.4(e) of the current award has been omitted from the exposure draft. We seek reinsertion of the clause (we note that this clause is subject to a common claim by the ACTU).

Clause 9.1 - Classifications and minimum wages

23. The table at clause 9.1 does not provide rates for casual employees. To ensure consistency with other modern awards, casual hourly rates must be provided.

Clause 9.4 - (b)(ii) and (c)(ii) – Apprentice minimum wages

24. There is a typographical error of additional spacing at the end of the clause.

Clause 9.4(g) – Apprentice jockey minimum

25. As per the Full Bench decision in [2014] FWCFB 7669 (PR557536) the preamble to clause 9.4(g) needs to be removed from 9.4(g) and inserted in the classifications table at 9.1 as follows:

“Apprentice jockey (minimum wage payable to an apprentice jockey is to be calculated by applying the relevant percentage in clause 9.4(a), (b) & (c) to the track rider minimum weekly wage)”

26. The table at clause 9.4(g) should be moved to clause 9.4(a) of the exposure draft so it reads,

Relevant attribute of the person at the time of entering into a training agreement as an apprentice

Apprentices who have not completed year 12

<i>Year of apprenticeship</i>	<i>Minimum weekly wage \$</i>	<i>Percentage of the relevant minimum rate</i>
<i>1st year</i>	<i>350.90</i>	<i>50</i>
<i>2nd year</i>	<i>421.08</i>	<i>60</i>
<i>3rd year</i>	<i>526.35</i>	<i>75</i>
<i>4th year</i>	<i>631.62</i>	<i>90</i>
<i>Adult apprentice in 1st year¹</i>	<i>561.44</i>	
<i>Adult apprentice in 2nd and subsequent years¹</i>	<i>656.90</i>	
<i>¹ Commencing after 1 January 2014</i>		

Apprentices who have completed year 12

<i>Year of apprenticeship</i>	<i>Minimum weekly wage \$</i>	<i>Percentage of the relevant minimum rate</i>
<i>1st year</i>	<i>385.99</i>	<i>55</i>
<i>2nd year</i>	<i>456.17</i>	<i>65</i>

3rd year	526.35	75
4th year	666.71	95
Adult apprentice in 1st year ¹	561.44	
Adult apprentice in 2nd and subsequent years ¹	2nd & 3rd year: 656.90 4th year: 666.71	
¹ Commencing after 1 January 2014		

27. Subsequently, there should be no clause 9.4(g).

Schedule A.2 – Casual employees hourly rates and penalty rates

28. The calculations for casual rates during overtime, Saturday, Sunday and public holidays are incorrect. This is because the calculations fail to take into account casual loading, which as per clause 6.5(e)(iii) and A.2.1 is paid for all purposes.



Jamila Gherjestani
NATIONAL LEGAL OFFICER