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

AM2014/205 Exposure Draft for the Horse and Greyhound Training Award 2010.

ATA submissions

The Australian Trainers' Association (ATA) submits the following in relation to the identified clauses in the Exposure Draft:

Clause 6.3 Probationary employment: We agree that probation periods create ambiguity and uncertainty in terms of their interaction with unfair dismissal protection and notice of termination requirements in the FW Act. For example, the existing clause 10.2 (d) provides periods of notice less than FW Act. This could indicate to an employer/employee that the period of notice required to be given during the probationary period is less than the FW Act requirement of one weeks notice for continues service of not more than one year.

Clause 6.5 Casual employees:

With regards to a submission on the use of the wording "the employment of a casual employee may be terminated at any time" given that a regular and systematic casual with reasonable expectation of continuing employment may access the unfair dismissal provisions of the Act.

It is somewhat difficult to provide a submission on the use of the above wording which may conflict with unfair dismissal provisions of the Act, when the provision of the Act's wording creates uncertainty and ambiguity.

Access to unfair dismissal provision of the Act are clearly defined pertaining to period of employment. s. 383 of the Act clearly identifies the periods needed to have access to unfair dismissal provisions of the Act. 6 months if not a small employer and 12 month if the employer is a small employer, this is measurable. Once over that hurdle you then come to s. 384 (2)(a)(i) which are not so clearly defined. S.384 (2) (a) of the Act states the following: a period of service as a casual employee does not count towards the employee's period of employment unless:

(i) the employment as a casual employee was on a regular and systematic basis; and

(ii) during the period of service as a casual employee, the employee had a reasonable expectation of continuing employment by the employer on a regular and systematic basis

The definition of what determines a regular and systematic casual with reasonable expectation of continuing employment was addressed by the Commission in *Ponce v DJT Staff Management Services Pty Ltd* [2010] FWA 2078, the Commission established the following principles:

- a casual employee that works varying hours from week-to-week or month-to-month, and / or has different starting and finishing times, is not conclusive evidence of irregular non-systematic employment
- unpredictable but frequent casual work may constitute regular and systematic employment
- if the number of hours worked are small, and the gap between days and times worked is long and irregular, this is evidence of an irregular and non-systematic casual employment.

However, the Commission will generally analyse the circumstances of each case on its own merits. With this in mind maybe consideration should be given to the following wording:

Clause 6.5 Casual Employees

(a) A casual employee is to be employed by the hour and the employment of a casual employee may be terminated at any time if the employment is:

(i) within 6 months for non small employers or;
(ii) within 12 months for small employers or;
(iii) If the gap between days and times worked is long and irregular.

Clause 9.4 (g) Apprentice Jockey minimum wages: The Exposure Draft minimum weekly wage for apprentices who have not completed year 12 for Adult apprentices in 2nd and subsequent years is $684.10.

The existing clause 13.6 (c) states the following: An apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be paid the rate of the lowest adult classification in clause 13.1 or the rate prescribed by clause 13.6 (a) for the relevant year of the apprenticeship, whichever is the greater.

If the apprentice had not completed year 12 then the lowest adult classification rate is $640.90. If the apprentice had completed year 12 then the 4th year rate would be greater than the lowest adult classification rate and the figure would be $650.47.

The ATA submits that the minimum weekly wage an adult apprentice in 2nd and subsequent years who have not completed year 12 should be $640.90 and those that have completed year 12 should be $650.47.

Schedule D – School- based apprentices: Schedule D.4 For the purpose of clause Schedule G,……
The existing Schedule E – School-based apprentices: Schedule E.4 For the purpose of clause 3,…..
ATA submits that Schedule D.4 should read for the purpose of clause 3 and not clause schedule G.

Clause 13.1 – Overtime and penalty rates: Clause 22.1 of the current award requires the overtime be paid at 150 % of the **relevant minimum wage calculated hourly**. The exposure draft states to be paid at 150 % of the **minimum hourly rate**. This is potentially a substantial change as it means the penalty rates are not paid on the current rate of pay under the relevant classification of employment but on the minimum hourly rate. The word "minimum" should be replaced with the word "relevant".

Clause 13.2 – Overtime and penalty rates: Clause 22.2 of the current award requires that all work on Sunday must be paid at 200% of the relevant minimum wage per hour for a minimum of three hours. The exposure draft refers to "minimum hourly rate for a minimum of three hours". This is potentially a substantial change as it means the penalty rate for Sunday work may not be paid on the current rate of pay under the relevant classification of employment.

ATA submits that the clause 13.2 of the Exposure Draft should read as follows: An employee required to work on a Sunday must be paid for all such work at 200% of the relevant hourly rate for a minimum of three hours.

Clause 14.4 Requirement to take **lave**: Should read "Requirement to take **leave**".

Wayne Lee
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