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Fair Work Commission
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17 April 2016

Re: AM2014/244 AWU submissions on the Exposure Draft for the *Silviculture Award 2016*

Background

1. On 23 March 2016 the President, Justice Ross published a Statement which requires submissions on drafting and technical issues for Group 3 exposure drafts to be filed by 14 April 2016.
2. The President subsequently agreed to The Australian Workers' Union's (AWU) request for an extension to 18 April 2016.
3. The AWU's submissions in relation to the Exposure Draft for the *Silviculture Award 2016* (Exposure Draft) as published on 28 January 2016 appear below.

Drafting and technical issues

4. Clause 5.2: Clause 11.4 (i) can be added as a facilitative provision which allows for individual agreement.
5. Clause 6.3: This should refer to "an average of 38 ordinary hours per week".
6. Clause 6.4 (a) (i): This should refer to "less than 38 ordinary hours per week".
7. Clause 6.4 (b): The words: "These hours once fixed can only be varied by mutual agreement between the employer and the majority of employees whose hours will be affected" should be deleted. Changes to the agreed hours are dealt with in clause 6.4 (c).

8. Clause 6.5 (b): The payment of the 25% casual loading is not confined to ordinary hours under clause 10.4 (b) of the *Silviculture Award 2010*. The clause should be amended to read:

For each hour worked, a casual employee must be paid at least...

9. Clause 8.2: This clause could be made clearer if amended to read: “Ordinary hours of work must not exceed an average of 38 per week over a work cycle agreed in accordance with clause 8.3.”
10. Clause 9.2: The penalty payment should be specified as 200% of the “applicable rate of pay”. The term “applicable rate of pay” has been defined and applied by the Full Bench in relation to the *Manufacturing and Associated Industries and Occupations Award 2016*.¹ The usual term “ordinary hourly rate” is not appropriate given this would not provide any additional payment to an employee working ordinary hours on a Sunday or public holiday.
11. Clause 9.3 (b): As per clause 9.2, the term used should be “applicable rate of pay” not “ordinary hourly rate”. Otherwise an employee working ordinary hours on the weekend or a public holiday or a shiftworker will drop to a lower rate because the definition of “ordinary hourly rate” does not include any of these penalties.
12. Clause 10.2: This should be amended to state: “The minimum hourly rate can be calculated by dividing the minimum weekly wage rate by 38.”
13. Clause 10.4 (a): This should be amended to read:

Employees may agree in writing to work on piecework rates. The piecework agreement must specify the applicable piecework rate which will be paid for all work performed under the piecework agreement. Provided that where an employee works on piecework rates, that employee must receive at least the ordinary hourly rate per hour of work.

The current provision does not require written agreement and specification of the piecework rate.

14. Clause 10.4 (d) and (e): we submit the following amendments should be made to the Exposure Draft to clarify paid leave entitlements for permanent employees who are paid piecework rates:

¹ See *4 yearly review of modern awards* [2015] FWCFB 7236 at [95] to [106]

- The insertion of a provision stating that during periods of paid leave a pieceworker is entitled to receive the greater of the following amounts:
 - The rate of pay specified in the Exposure Draft for the appropriate type of leave; or
 - The employee’s average piecework earnings calculated in accordance with the definition of “base rate of pay” for award/agreement free pieceworkers contained in Regulation 1.09 of the *Fair Work Regulations 2009*.

15. Clause 11.3 (b): The current wording arguable indicates an employee can receive their normal rate when working as a leading hand. We propose the following amendments:

An employee appointed as a leading hand will be paid a leading hand allowance each week in accordance with the following table:

INSERT CURRENT TABLE

*The allowance will be paid **in addition** to the employee’s own rate, or the rate of the highest classification of the employees supervised, whichever is the higher.*

16. Clause 11.4 (d) (i): This should relevantly read: “with a minimum payment of half an hour per day...”

17. Clause 11.4 (f) (iv): The last sentence seemingly should refer to “clauses 13.6, 11.6 (d) and 11.6 (e) of this award” because clause 11.6 (d) also prescribes a travelling time entitlement.

18. Clause 11.6 (a) (i): It appears only one dot point is required stating:

if the employee is maintaining a separate place of residence, on being requested by the employer, the employee must inform the employer at the time of engagement that they maintain a separate place of residence from the address recorded on the job application.

19. Clause 13.3 (a): This clause would be clearer if it stated: “Overtime will be arranged so that employees have at least 10 consecutive hours off duty after completing the overtime”.

20. Clause 13.6 (a) (i) and (ii): Clause 13.6 (a) (i) applies if less than 2 hours of work is performed on the call-out. If more than 2 hours of work is required on the call-out, the superior entitlements in clause 13.6 (a) (ii) apply.
21. Clause 14.11: It appears the words after the first comma should be: “inclusive of time worked for accrual purposes as prescribed in clause 14.5”.
22. Clause 15.7: The use of the term “ordinary hourly rate” throughout this clause could lead to a shiftworker falling onto a lower rate when they commence fighting a fire because shift loadings are not included in the “ordinary hourly rate”. It appears the term “applicable rate of pay” may be more appropriate as per our submission above for clause 9.2.
23. Clause 16.4: The requirement to take leave within 18 months of accrual is not compatible with a system of progressive leave accrual. We submit this clause should be deleted in preference for model terms developed during the common issue annual leave proceedings.
24. Clause 16.5 (b): It may be clearer if this is amended to read: “an additional loading of 17.5% of the ordinary hourly rate per hour of leave taken”.
25. Schedule A.1: This should read: “includes the industry and special allowances” – with the word “all” deleted.
26. Schedule A.2.3: Given fire fighting rates have been included in Schedule A.2.1, they would also have to be included in the shiftworker table. Otherwise the indication will be that shift workers don’t get any additional benefits when fighting fires.
27. The heading for the column “5 successive shifts” should be “less than 5 consecutive shifts”.
28. There also needs to be a separate column for Sundays – this could be expressed as 200% for all hours worked (see clause 13.5 (b) (i) and 14.12 (b)).
29. Schedule A.3.2: As per above, a Sunday rate of 225% for all hours worked should be inserted and bushfire fighting rates may be required given they appear in Schedule A.3.1.
30. Schedule A.3: The inclusion of overtime rates for casuals will be helpful given they are often the subject of confusion.

31. Schedule F: The definition of “silviculture and afforestation” is not needed given it already appears in clause 3.2.

A handwritten signature in black ink, appearing to read 'SC', is positioned above the printed name.

Stephen Crawford

SENIOR NATIONAL LEGAL OFFICER