

Fair Work Commission
Level 10, Terrace Tower, 80 William Street
East Sydney NSW 2011
Via email: AMOD@fwc.gov.au

9 May 2017

**Re: AM2014/268 Food, Beverage and Tobacco Manufacturing Award 2010 –
drafting and technical issues – supplementary submission**

BACKGROUND

1. These submissions of the Australian Workers' Union (AWU) provide comment on the accuracy of the *Draft Report* published 2 May 2017 in accordance with paragraph [3] of the *Draft Report*, and supplement our material filed on 21 April 2017 in response to the submission of the Australian Industry Group (AIG) on 7 May 2017, which inaccurately states the position of the AWU.
2. References below to item numbers refer to items listed in the *Summary of Submissions – Technical and Drafting* published by the Commission on 8 March 2017. All clause numbers referred to below are those contained in the Exposure Draft for the *Food, Beverage and Tobacco Manufacturing Award 2010*, published on 16 November 2016.

SUBMISSIONS

Item 9 & Item 10 – Facilitative provisions

3. In its correspondence of 7 May 2017, the AIG incorrectly states that the AWU has proposed to change the wording of clause 7.1(b).
4. The AWU has thus far proposed that **no changes** be made to clause 7 of the Exposure Draft for the *Food, Beverage and Tobacco Manufacturing Award 2010*.

This was clearly stated at paragraph 8 in our material filed 21 April 2017.

5. The AWU still considers the dictionary definition of the word 'facilitate' to be of relevance to this issue.

6. We note a recent decision of the Fair Work Commission Full Bench states:

"...we do see merit in inserting an index to facilitative provisions. Such an index will make the awards easier to understand and will support the objective of promoting flexible working practices, by clearly identifying the facilitative provisions in a particular award."¹

7. We submit that the retention of clauses 24.10 & 24.13 in the table at 7.2(a), or the 'index' as it is referred to above, reflects the purpose of the index as stated in this decision; that is, making the award easier to understand and promoting flexible working practices.

8. We therefore find the following assertions uncontroversial:

8.1. The cashing out of annual leave and the taking of annual leave in advance are both arrangements that may be described as 'flexible working practices';

8.2. The inclusion of these clauses in the index 'promotes' the use of these flexible arrangements; and

8.3. The identification of **all** clauses that provide a framework to vary standard entitlements by agreement makes the award 'easier to understand'.

9. The same decision continues:

"It may be that the introductory words to the index may require some amendment to accommodate the nature of the facilitative provisions in a particular award, as suggested by the ACTU, but this can be done on an award by award basis in response to proposals by interested parties, rather than on a general basis across all modern awards."² (Our emphasis at underlined)

¹ [2014] FWCFB 9412 at [43].

² [2014] FWCFB 9412 at [43].

10. We note that the AIG proposal – to change the content of the index to accommodate the introductory words – is contrary to this.
11. We insist once again that the AWU is seeking **no changes** to clause 7 of the Exposure Draft for the *Food, Beverage and Tobacco Manufacturing Award 2010*. It necessarily follows that there is no requirement of the AWU to offer a ‘cogent reason’ to amend clause 7.1(b) as the AIG has suggested.
12. We trust that this has clarified our position for both the AIG and the Commission regarding this particular AIG proposal.

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13. The AWU respectfully suggests that clause 22.2(b) has been incorrectly noted as clause 22.5(b).

Yours faithfully,

A handwritten signature in black ink, appearing to read 'ZD', with several horizontal strokes underneath.

Zachary Duncafe
NATIONAL LEGAL OFFICER
The Australian Workers' Union