

Fair Work Commission
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East Sydney NSW2011
By email: amod@fwc.gov.au

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Re: AM2014/285 AWU submissions on the Exposure Draft for the Social, Community, Home Care and Disability Services Industry Award 2016

BACKGROUND

1. On 10 May 2016 the President, Justice Ross published a Statement and Directions regarding a plain language pilot and Group 4 awards.
2. The Directions require the filing of submissions regarding drafting and technical issues in Group 4A, B and C exposure drafts by 30 June 2016.
3. The submissions of the Australian Workers' Union (AWU) in relation to the exposure draft for the *Social, Community, Home Care and Disability Services Industry Award 2016* ('the Exposure Draft') as published on 13 May 2016 appear below.

DRAFTING AND TECHNICAL ISSUES

Minimum hourly rate

4. The term 'minimum hourly rate' is used throughout this Award, but is not defined. For example clause 11.2 reads (emphasis added):

A casual employee will be paid the minimum hourly rate appropriate to the employee's classification...

5. In the absence of a definition, this clause is ambiguous as to whether an employees level and pay point is to be taken into account in the minimum hourly rate. The AWU suggest the wording, or similar wording to:

***Minimum hourly rate** means the minimum hourly rate applicable to an employee's Classification, Level and Pay Point as set out at the applicable clause 16.1, 16.2 or 16.3.*

Drafting error

6. Clause 13.1(a)(i): Insert the word 'or' after the semicolon.

Ordinary Hours – part time and casual employees

7. Clauses 10.3, 13, and 19.1(b): The dictating clauses relating to ordinary hours for part time and casual employees are inconsistent with section 147 of the *Fair Work Act 2009* (Cth) ('the FWA') which states:

A modern award must include terms specifying, or providing for the determination of, the ordinary hours of work for each classification of employee covered by the award and each type of employment permitted by the award.

8. In relation to part time employees, the overtime provisions at clause 19.1(b) are inconsistent with both:
- 8.1. the system of ordinary hours prescribed at clause 13 for all employees; and
 - 8.2. the system of ordinary hours by agreement prescribed at clause 10.3 for part time employees.
9. In relation to casual employees, the overtime clause 19.1(b) is inconsistent with clause 13.
10. A part time or casual employee is paid overtime at clause 19.1(b) for work performed in excess of 38 hours per week, or 76 hours per fortnight, or 10 hours per day. At clause 13.1 the span of hours is 8, and only by agreement can it be extended to 10. This has been acknowledged in the overtime provisions for full time employees, but not for part time and casual employees. Clause 13.1(a)(iii) has also not been accounted for in the overtime provisions for part time and casual employees.
11. In order to reconcile the inconsistencies identified above, the AWU submit:
- 11.1. in relation to a part time employee – either the regular pattern of work determined at clause 10.3, or the ordinary hours prescribed at clause 13 should be utilised for the purpose of observing overtime at clause 19.1(b); and
 - 11.2. in relation to casual employees, the ordinary hours prescribed at clause 13 should be utilised for the purpose of observing overtime at clause 19.1(b).
12. The system of ordinary hours should be established in the substantive clauses for ordinary hours and part time and casual employees rather than by dual construction with the overtime provisions. That is, ordinary hours should be clear from a reading of clauses 10, 11 and 13 as applicable. If these changes are accepted, consequential amendments will be necessary to reconcile the overtime provisions.
13. Clause 11.1: In addition to the above, this clause should be amended as follows:

A casual employee is an employee who is engaged and paid as a casual employee, and is not a part time or full time employee, and works a maximum of 38 ordinary hours per week

Shiftworkers and additional leave

14. Clause 21.2: The AWU supports the suggested time frame put by the Commission in relation to shiftworkers and the accrual of an additional weeks leave.

Minimum engagement for social and community services employees undertaking disability services work

15. Clause 11.3(c): In response to the question posed, the AWU understands this clause covers the above-identified employees.

Progression through pay points

16. Clause 12.4: In response to the Commission's question to parties, the AWU respond in the affirmative.

Rosters

17. Clause 14.3: The Commission asks whether references to mail and facsimile should remain as methods of communicating roster changes. In order to modernise the clause, taking into account changes in technology norms, and acknowledging that mail and facsimile are not entirely redundant, the AWU suggest tailoring the clause to read:

...changes to rosters may be communicated by telephone, direct contact, ~~mail~~, email or, where necessary, mail or facsimile.

18. Clause 14.3(e): In relation to relieving staff, the AWU would support the deletion of this clause. There are no provisions in this Award for relieving staff. Any employee in a relieving position will be part time, full time or casual, and the provisions regarding rosters would apply to them as normal. Incorporating a new clause defining relieving staff would be a substantive change.

Broken shifts - sleepovers

19. Clause 14.5: In response to the question posed, the AWU submits that a sleepover does not meet the definition of a shift for the purposes of broken shifts. In response to the second question, an employee performing a sleepover is governed by, and entitled to, all that is provided under clause 14.5.

Overtime rates

20. Clause 19.1: The AWU agrees with the Commission's reasoning provided, and supports the deletion of 'Disability services' from the table at this clause.

END



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NATIONAL LEGAL OFFICER