

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

24 November 2015

Re: AM2014/76 AWU submissions on the Exposure Draft for the *Marine Tourism and Charter Vessels Award 2015*

Background

1. These submissions follow the 4 Yearly Review of Modern Awards Full Bench's Decision on 23 October 2015 regarding Group 1C, 1D and 1E awards.
2. This Decision directed parties to file feedback on the revised Exposure Drafts by 4:00pm on 20 November 2015.
3. The Australian Workers' Union's (AWU) submissions in relation to the Exposure Draft for the *Marine Tourism and Charter Vessels Award 2015* (Exposure Draft) as republished on 30 October 2015 appear below.

Technical issues

4. Clause 6.4 (c) (iii): The wording in the Exposure Draft appears to remove a casual Overnight charter employee's entitlement to receive their casual loading on overtime hours. Clause 10.3 (a) (iv) of the current award requires the casual loading to be paid for all hours worked. Clause 6.4 (c) (iii) of the Exposure Draft potentially removes this entitlement because it begins with the words: "for working ordinary hours..." (our emphasis)
5. We submit clause 6.4 (c) should be redrafted to read:

(c) A casual Overnight Charter Employee

- (i) *is engaged to work a specified trip or trips, at the direction of the employer;*
- (ii) *must be engaged for a minimum of one half day trip;*

(iii) *must be paid the minimum rate in clause 10.1 for the classification in which they are employed; and*

(iv) *must be paid a casual loading of 25%.*

Casual Non-overnight charter employees

6. The hours of work conditions for casual Non-overnight charter employees are difficult to comprehend in the Exposure Draft (and current award).
7. The Exposure Draft currently appears to prescribe the following conditions for casual Non-overnight charter employees:
 - A restriction on working more than 12 hours per shift: clause 6.4 (d) (ii);
 - A restriction on working more than 38 hours in a week: clause 6.4 (d) (iii);
 - An entitlement to a minimum rate of pay and casual loading for ordinary hours (our emphasis): clause 6.4 (d) (iv) and clause 10.2;
 - A span of ordinary hours of 6am to 2am Monday to Saturday. This can be varied to any 6 days of the week by mutual agreement if an employer gives 14 days of written notice: clause 8.2 (c); and
 - No entitlement to overtime rates: clause 13.1.
8. The main problem which arises with these provisions is the lack of certainty regarding work outside the span of ordinary hours in clause 8.2 (c). The current provisions indicate these hours would be neither ordinary hours nor overtime.
9. However, unlike in relation to more than 12 hours per shift or more than 38 hours per week, there is no express restriction on hours outside the span in clause 8.2 (c) being worked.
10. We submit the best approach to resolving this issue would be inserting the following words at the end of clause 13.1 in the Exposure Draft:

A casual employee is entitled to the above overtime rates for all time worked outside the span of ordinary hours in clause 8.2 (c).

11. To clarify that a casual employee would still receive their casual loading when overtime is worked, we propose that clause 6.4 (d) (iv) of the Exposure Draft be amended to read:

For each *ordinary*-hour worked must be paid the minimum hourly rate in accordance with clause 10.2 for the classification in which they are employed plus a loading of 25%.

12. Clause 9.3 (c) and 17.3 (c): Given other amendments made to the Exposure Draft (for example, clauses 9.6 and 13.2) it appears the reference to “ordinary rate” should be amended to “minimum hourly rate”.
13. Clause 19.2: There is a typo – the provision should read: “...the employer may withhold *from* any money due to the employee...”
14. Inclusion of rates tables: There does not appear to be any substantive reason why this award should not include rates tables in the Schedules given this approach is being adopted for most other awards.



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