

IN THE FAIR WORK COMMISSION

**4 Yearly Review of Modern Awards**

**Matter No.: AM2014/1 & Ors**

**Further Common Issues**

**Submissions of:**

**Australian Council of Trade Unions (ACTU)**

DATE: 11 November 2014

D No.: 140/2014

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## Introduction

1. On 30 October 2014 the President, Justice Ross, issued a Statement ([2014] FWC 7742) which, among other things, required that interested persons make submissions on whether a number of additional issues and the proposed small business schedule should be dealt with as 'common issues'.
2. The submission should also include an outline of how the matter should be dealt with and any timeframes.
3. The additional issues, including the proposed small business schedule, are:
  - a. an issue regarding the motor vehicle allowance in over 70 modern awards;
  - b. an issue regarding the method of calculating monthly wages;
  - c. an issue regarding a proposed overpayment provision;
  - d. a domestic violence clause that relates to leave;
  - e. a family friendly work arrangements clause that supplements National Employment Standards (**NES**) rights; and
  - f. the introduction of a small business schedule in approximately 108 modern awards.

## Motor vehicle allowance

4. The ACTU submits that this issue should not be dealt with as a common issue.
5. Our preliminary view is that the issues raised by The Association of Payroll Specialists (**TAPS**) are taxation issues rather than industrial issues.
6. We are concerned that the correspondence from TAPS dated 11 June 2014 seeks to reduce the entitlements of award-reliant employees.

## Monthly wages

7. The ACTU submits that this issue should not be dealt with as a common issue.
8. Whether wages can be paid monthly will depend on the terms of the relevant award. As such this matter, if an issue, should be dealt with on an award by award basis.
9. Likewise, the method of calculation may have specific industrial origins that relate to specific awards.

### **Proposed overpayment provision**

10. The ACTU submits that this issue should not be dealt with as a common issue.
11. Similar to the issue above, monthly payment of wages and the treatment of any overpayment will depend on the specific award.
12. In the four awards referred to in the correspondence from TAPS dated 14 October 2014 monthly payment of wages is optional, not mandatory. This is broadly reflected in the table attached to the submission dated 26 September 2014. As such, there is no obligation to pay monthly and no necessity for a provision dealing with overpayment.

### **Domestic violence**

13. We refer to our outline of submissions dated 28 October 2014.
14. The claim relates to all awards.

### **Family friendly work arrangements**

15. We refer to our outline of submissions dated 28 October 2014.
16. The claim relates to all awards.

### **Small business schedule**

17. The ACTU submits that this issue should not be dealt with as a common issue. It should be dealt with on an award by award basis.
18. We are opposed to this claim in any form or in any manner.
19. In order for it to be considered a common issue there is a threshold issue which needs to be considered in relation to whether there are small (or micro) businesses which utilise the relevant award and/or whether such businesses are a feature of a particular industry.
20. Whilst on its face, the claim may appear common in that it relates to multiple awards; its impact will have vastly differing effects on different awards and within particular industries.
21. Of the awards included in the schedule many do not cover small businesses and the schedule would not be relevant for the purposes of some awards. We refer for example to

the Black Coal Mining Industry Award, the Mining Industry Award, and the Coal Export Terminals Award. There are other awards which would be in the same position.

22. The schedule would effectively remove award entitlements for safety net-reliant employees, which is a main reason for our wholesale opposition, and this needs to be considered on an award by award basis with specific attention paid to the make-up of the industry.
23. We note that the Pharmacy Guild shares our view in relation to whether the small business schedule should be dealt with as a common issue in relation to the Pharmacy Industry Award.

## **Conclusion**

24. Should the Commission determine that any of the above issues are to be dealt with as a common issue, where we have indicated otherwise, we suggest that they be dealt with as follows:
  - a. First half of 2015:
    - i. motor vehicle allowances
    - ii. monthly payment of wages
    - iii. overpayment of wages
  - b. Second half of 2015:
    - i. small business schedule
25. Parties seeking the changes should be required to file substantive submissions early next year.
26. We suggest that conciliation conferences would be an appropriate way to then deal with these issues. This would give the parties seeking the changes the opportunity to further articulate their reasons and for those opposing them to articulate the reasons why.

ACTU