

Fair Work Commission
Level 10, Terrace Tower, 80 William Street
East Sydney NSW2011
By email: amod@fwc.gov.au

08 August 2016

Re: AM2014/280 AWU reply submissions on drafting and technical issues raised in the Exposure Draft for the *Plumbing and Fire Sprinklers Award 2016*

BACKGROUND

1. On 15 July 2016 the President, Justice Ross published a Statement and amended Directions regarding a plain language pilot and Group 4 awards.
2. The Directions require the filing of submissions in reply to drafting and technical issues raised in the Exposure Draft¹ for the *Plumbing and Fire Sprinklers Award 2016* ('the Exposure Draft') by 03 August 2016.
3. The following parties filed submissions on drafting and technical issues found in the Exposure Draft:
 - The Australian Workers' Union (**AWU**)
 - Communications Electrical Electronic Energy Information Postal Plumbing and Allied Services Union of Australia / Plumbing Trades Employees' Union (**CEPU**)
 - Master Plumbers Group (**MPG**)
 - Fire Protection Association Australia (**FPA**)
 - The Master Plumbers and Mechanical Contractors Association of NSW (**MPA**)
 - The National Fire Industry Association (**NFIA**)
 - Australian Business Industrial and the NSW Business Chamber (**ABI**)
 - Australian Industry Group (**AIG**)
 - Business SA (**BSA**)
4. The reply submissions of the Australian Workers' Union appear below.

REPLY SUBMISSIONS

Early start facilitative provision – Clause 7.2 and 15.3

5. The AWU agree with the submissions of MPG and ABI in relation to this clause.

¹ The Exposure Draft as published on 26 May 2016.

6. We note that BSA submit the change suggested is unnecessary, but given the divergent submissions of the parties, it would appear some clarification would be beneficial.
7. The FPA discuss a variety of possible circumstances can arise for employees in relation to an early start, and that this cannot be addressed by the proposition that an early start be agreed to by a 'majority of employees'. The AWU are unsure if the position of the FPA is that the wording remain or be changed in order to address the various circumstances.
8. The CEPU prefers clause 15.3 remain an agreement between the employer and its employees to ensure individual employees are accounted for, using the example of an employee with child caring responsibilities. MPA similarly submit the agreement is with the individual employee. The AWU acknowledge this risk but consider the word 'employees' (plural) is ambiguous, and may not be interpreted to refer to an agreement with individual employees. We also note that employees may access the Award flexibility clause to vary the effect of the early start provision otherwise agreed to by a majority of employees.

Adult Apprentices – clause 13.14(d)

9. The AWU agree with the CEPU – that this clause is allowable, although, for the reasons set out in our 06 July 2016 Submission, the AWU would not oppose the deletion of this clause. Various parties have made submissions on this issue. There is a fairly even balance as to whether it should be deleted or retained:
 - NFIA have provided similar commentary to the CEPU and AWU; but have not suggested that the clause be kept or removed;
 - FPA say there is a logical progression contained in the subclauses and thus the provision should be retained;
 - MPA submit there is no evidence that would support its removal;
 - MPG say the clause is aspirational and should be removed; and
 - BSA and AIG submit the clause is discriminatory and should be removed.
10. The AWU do not wish to change our position as set out in our 06 July 2016 Submission taking the above submissions into account.

Overtime meal and rest breaks – clauses 16.5 and 16.6

11. All parties that made submissions regarding placement of these clauses (AWU, FPA, MPG, MPA, BSA, and CEPU) preferred that they be moved back to clause 21 (overtime). The AWU also support the CEPU's suggestion that these clauses are referenced at clause 16.

Payment of wages – clause 18.8

12. MPA submitted that this clause should not be updated as payment by electronic means was already accounted for in the current wording. Various parties provided that same reasoning, but nonetheless supported the adoption of a reference to payment by electronic means.

13. The AWU had previously suggested the removal of the words 'bank cheque, bank or similar transfer' and 'electronic fund transfer' added. This is the same position of the FPA. Taking into account the submissions of other parties, the AWU's amended position is that the reference to electronic fund transfer be included, but no method of payment be removed.

Allowances for junior fire sprinkler fitter employees – clause 20.3(f)

14. The AWU agree with the CEPU and the MPG that all apprentices receive this allowance, and disagree with all parties that submitted otherwise. Clause 18.2 provides that the allowance is paid at the % rate as applicable to an employee's year of apprenticeship.
15. Accepting that clause 18.2 allows for clause 20 to prescribe otherwise, the AWU understand the Commission's question is asking more than what is stated at clause 20. The FPA, ABI, BSA have not advanced any reasoning beyond restating the wording at this clause.

All-purpose rate of pay – Schedule B

16. Those parties, (other than BSA) that made submissions in response to the Commission's note, each confirmed the fire sprinkler fitting trade allowance is not paid to apprentices and adult apprentices. The AWU agree with the majority, and understand the allowance is not paid in accordance with the reasoning provided by the FPA.

Shiftwork provisions

17. The FPA invite the parties to consider the benefits of a 'shiftwork' clause as the existing Award only implies shiftwork. The FPA suggest that to separate shiftwork from ordinary hours of work would improve the usability of the Award. The AWU had made the same invitation in our 06 July 2016 Submission.

Missing facilitative provisions – clause 7.2 and others

18. ABI have identified missing provisions that are not referenced in the table at clause 7.2 that they submit are facilitative provisions. The provisions identified by ABI each provide an alternative to the 'standard approach' by agreement, which fits the description of a 'facilitative provision' defined at clause 7.1. The wording at clause 7 also makes clear the table is intended to be exhaustive. We agree with ABI that the table be amended.

Minimum weekly rate – clause 18.1

19. BSA submits this clause should be amended to indicate the weekly rate only applies to full-time employees. The AWU does not consider this necessary as the table provides the same rate on an hourly basis, and the part time and casual employment provisions make clear that wages are paid on a pro rata, and hourly basis.

Types of employment – clauses 10 and 11

20. BSA submits clauses 10 and 11 should be merged to indicate that weekly hire employees can be engaged on a full time and part time basis, and to avoid

creating a 'fourth category' of employment. The AWU consider it is clear how the categories operate; however understand BSA's point, and admit the structure could be improved.

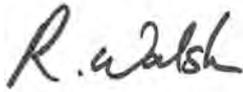
Casual employment (definition) – clause 12

21. The AWU do not oppose AIG's submission to insert the wording 'as such' at this clause.

Casual employment (rate) – clause 12.2 and Schedule C

22. AIG submit the Exposure Draft has created a substantive change by expressing the casual rate as calculated on the 'ordinary hourly rate' rather than the 'minimum wage'. They have also proposed to change the relevant tables summarising the hourly rates. The AWU understand this issue is being dealt with as a common issue in AM2014/197.

END

A handwritten signature in black ink, appearing to read 'R. Walsh', is positioned above the typed name.

Roushan Walsh
NATIONAL LEGAL OFFICER