

## IN THE FAIR WORK COMMISSION

### Section 156 - *Fair Work Act 2009* Four Yearly Review of Modern Awards

#### *Amusement, Events and Recreation Award* (AM2014/256)

#### Technical and Drafting issues

Date of document	18 January 2016		
Lodged by	The Australian Workers' Union		
Address for service	Level 10, 377 – 383 Sussex Street, Sydney, NSW, 2000		
Telephone	(02) 8005 3333	Contact email:	<a href="mailto:nat.office@nat.awu.net.au">nat.office@nat.awu.net.au</a>
Facsimile	(02) 8005 3300		

# THE AUSTRALIAN WORKERS' UNION'S OUTLINE OF SUBMISSIONS

## Introduction

1. The Australian Workers' Union (AWU) makes these submissions pursuant to the amended directions issued by the Fair Work Commission (Commission) on 21 December 2016.
2. These submissions relate to the technical and drafting issues of the exposure draft of the *Amusement, Events and Recreation Award* (AM2014/256).

## Technical and Drafting issues

### Clause 1.1 - Title and commencement

3. Clause 1.1. says,

*"This award is the Amusement and Events and Recreational Award 2016."*

4. The word 'and' underlined and in red above should be deleted as throughout the exposure draft the name of the Award is cited as '*Amusement Events and Recreational Award 2016*', *this is also consistent with the wording in the current Award.*
5. Clause 1.1 also needs to be consistent with paragraph [10] to [11] of the Full Bench Decision in [2014] FWCFB 9412, therefore it must contain the following clause.

*"A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation."*

### Clause 4.2(c) – Coverage – Definition of amusements, events and recreation industry

6. Clause 4.2(c) in the exposure draft says,

*"For the purpose of clause 4.1, the amusement, events and recreation industry also includes:"*

7. Clause 4.2(c) relates to the 'coverage' and 'industry participants' in amusement, events and recreation industry, hence it is not limited to the definition of 'coverage' at clause 4.1 but to the entire clause 4, this is how it is also applied in the current Award. We therefore submit that the exposure draft be amended to state,

“For the purpose of ~~clause 4.1~~ **this clause (clause 4)** the amusement, events and recreation industry also includes.”

Clause 7.2 – Facilitative provisions or flexible working practices

8. The Facilitative table in the exposure draft is incorrect, hence corrections to the table are identified in below red.

Clause	Provision	Agreement between an employer and:
11.6	Casual employees – minimum engagement	An individual
<del>13.2</del> 13.3	Ordinary hours of work	The majority of employees <del>or an individual</del>
<b>13.4</b>	<b>Ordinary hours of work</b>	<b>An individual</b>
16.5(a)(ii)	Payment of wages – period of payment	The majority of employees
19.7	Time off instead of payment for overtime	An individual
20.2	Annual leave in advance	An individual
20.3	Cashing out of annual leave	An individual

Clause 13 – Ordinary hours of work

9. The title of the clause should reflect the current Award, that is, it should state ‘*Ordinary hours of work and rostering*’ not just ‘Ordinary hours of work’.

Clause 16.1 - Minimum wages – Adult employees

10. The Award contains an all purpose allowance at clause 17.2 of the exposure draft. Therefore, consistent with the definition of ‘ordinary hourly rate’ at clause 2 – definition of the exposure draft, the preamble to the minimum wages table should read (suggested changes in red),

“An employer must pay adult employees the following minimum wages (**plus any applicable allowances**) for ordinary hours worked by the employee”

Clause 17.3(b) - Expense Related Allowance - Meal Allowance

11. The exposure draft asks whether the meal allowance be restricted to ordinary working day.
12. Ordinary hours can be worked any day from Monday to Sunday under clause 13.5 – *Ordinary hours*, thus there are no ‘ordinary working days’.

13. Furthermore, the words 'ordinary working day' does not appear anywhere in the exposure draft other than at clause 17.3(b), hence the reference to 'ordinary working causes unnecessary confusion and must be removed so the clause can read as follows,

*“An employee who is required to work overtime for two or more hours immediately after finishing their ordinary hours of work ~~on an ordinary working day~~ must be paid a meal allowance of \$10.98 unless the employer provides a meal.”*

#### Clause 19.1 – Overtime

14. The clause omits that overtime is paid to full time and part time employees when they work over eight (8) ordinary hours per day as per clause 13.2 of the exposure draft.

#### Clause 19.5(a) – Overtime - Sunday and public holiday work

15. Clause 13.5 outlines that ordinary hours can be worked Monday to Sunday.

16. Therefore, the rate payable for an employee who works their ordinary hours on a Sunday is 150%.

17. Therefore, clause 19.5 must be amended to state that,

*All-time Ordinary hours worked on a Sunday will be paid for at 150% of the ordinary hourly rate.*

18. Overtime worked on a Sunday is paid pursuant to clause 19.2 of the exposure draft as 150% for the first three hours and 200% thereafter.

**END**

**The Australian Workers' Union**