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20 January 2017

Award Modernisation Team
Fair Work Commission
Level 10, Terrace Tower, 80 William Street
EAST SYDNEY NSW 2011
By email: *amod@fwc.gov.au*

Re: AM2014/264 – AWU submissions on the Exposure Draft for the *Dry Cleaning and Laundry Industry Award 2010*

Background

1. These submissions of the Australian Workers' Union (AWU) are made pursuant to the Amended Directions of Justice Ross, President of the Fair Work Commission, issued on 21 December 2016 in AM2014/250 and others.

2. Parties are directed to file submissions on drafting and technical issues in the exposure drafts for Group 4D, 4E and 4F awards by 18 January 2017. The submissions that follow refer to the exposure draft for the *Dry Cleaning and Laundry Industry Award* ('the Exposure Draft') as published on 3 November 2016.

Technical and drafting issues

3. **Clause 2:** It is not necessary to repeat the definition of the "dry cleaning and laundry industry" in the definitions clause given it already appears in clause 4.2.

4. **Clause 11.4:** Clause 10.5(c) of the *Dry Cleaning and Laundry Industry Award 2010* (the Award) states the 25% casual loading is paid "for all hours worked". Clause 11.4 of the Exposure Draft states the 25% loading is paid for "all ordinary hours worked" (our emphasis).

5. The addition of the word "ordinary" arguably removes the entitlement for a casual employee to receive their 25% loading when they work overtime hours. As a result, it is a substantive change. The word "ordinary" should be deleted.

6. **Clause 13.1**: The words "will average 38 hours per week" should be replaced with "will be 38 hours per week". There is no capacity currently for the averaging of ordinary hours in the dry cleaning stream. Clause 9.1 of the Exposure Draft does not allow an averaging of the 38 hours for a full-time employee, clause 10.1(a) of the Exposure Draft does not allow an averaging of part-time ordinary hours and clause 11.7 of the Exposure Draft does not allow an averaging of casual ordinary hours.

7. It appears these general terms have been modified in the laundry stream because a 4-week roster period is specifically contemplated by clause 14.2(c) for day workers and clause 15.1 for shift workers. No corresponding averaging provisions appear for the dry cleaning stream.

8. The current reference to an "average" of 38 hours in clause 13.1 without any reference to an averaging period arguably does not satisfy the requirement in section 147 of the *Fair Work Act 2009* for an award to specify, or provide for the determination of, ordinary hours of work. The actual ordinary hours of work cannot be properly determined if no averaging period is specified because an average cannot be determined mathematically without the identification of the averaging period.

9. **Clause 14.9:** It is unclear why a cap of 12 rostered days off is imposed for a 12-month period when the accrual of one day in each 4-week cycle should lead to 13 rostered days off accruing for the year.

10. **Clause 18.4 (d):** The words "or the rate prescribed by clause 18.4(b) for the relevant year of the apprenticeship, whichever is the greater" can be deleted given the first year apprenticeship rate of 50% or 55% of the Level 5 dry cleaning rate will never be above 80% of the Level 5 dry cleaning rate.

11. **Part 5 – Heading:** The reference to "Overtime and Penalties Rates" should be "Overtime and Penalty Rates".

12. **Clause 22.3:** The Exposure Draft needs to be updated to include the new TOIL term inserted into the Award on 14 December 2016.

13. **Clause 22.4(b):** The following wording may be clearer:

> *An employee who works so much overtime after finishing their ordinary hours on a day or shift that they will not have at least 10 consecutive hours off duty before commencing ordinary hours on their next day or shift will, subject to this clause, be released after completion of the overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.*

14. The changes allow the provision to apply equally to day work and shift work and clarifies the 10 hour break is between the completion of overtime and the commencement of ordinary hours.

15. **Clause 22.5:** This should be amended to read:

> *An employee recalled ~~from home~~ to work after having left the premises of the employer will be paid **at the applicable overtime rate** for all time worked, with a minimum payment of four hours.*

16. The operative factor for the clause should be the employee leaving the worksite and then having to return to work. The reference to "at home" could negate the entitlement for an employee who didn't actually return home after completing work. The employee may have attended a sick family member in hospital or may have to travel a significant distance to get home. Employees in these circumstances should still receive the recall entitlement.

17. **Clause 23.1:** There is the potential under the Exposure Draft for an employee to suffer a reduction in pay when they perform ordinary hours on a Saturday. This is because clause 23.1(a) provides a rate of 125% for all ordinary time worked before midday on Saturday. This presumably includes work from 12:00am on Saturday morning.

18. However, an employee may be receiving a 130% loading under clause 24.4 for working a permanent night shift or 150% or 200% for working non-successive shifts under clause

24.5 or 24.6. It is unjust for an employee in these circumstances to have their rate reduced to 125% and that is unlikely to have been the intent.

19. An approach to resolving this issue would be inserting the following words at the end of clause 23.1(b) of the Exposure Draft:

    However, an employee who is receiving a higher penalty rate under clause 24 will continue to receive that higher rate.

20. **Clause 23.4:** An additional provision should be inserted to guarantee payment on termination to an employee if the time off has not been taken. The wording used for the TOIL term in clause 22.2(h) of the Award appears suitable.

21. **Clause 24.1(b):** In relation to the morning shift for laundry workers, the prescribing of only a commencing time trigger but not a finishing time trigger is unusual in awards and could create uncertainty. For example, a shift commencing at 6pm the previous evening is arguably a shift which commences before 6:00am but this would not ordinarily be considered a morning shift.

22. Options to resolve this issue could include inserting either a span for the commencing time of the shift (e.g. 4am to 6am) or reference to the shift finishing after a particular time (e.g. midday) as per the dry cleaning definition.

23. **Clause 24.8:** In response to the question posed by the Commission, the answer is no. Clause 24.8 still has work to do in terms of protecting employees from overpayment claims. The statutory limitation period for claims arising in 2012 has not passed.

24. **Clause 36:** The reference to “the benefits and payments they would have received under clause 34 – Redundancy” should be amended to “the benefits and payments they would have received under clause 34, 35 and 37”.

25. **Schedule C.2.1 and C.3.2:** The columns for day work ordinary hours worked on a Saturday can be deleted. Day workers in the laundry stream cannot work ordinary hours on the weekend under clause 14. The different Saturday ordinary time rates in clause 23 would only apply to shift workers in the laundry stream.

The Australian Workers’ Union
20 January 2017