

Fair Work Commission
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22 February 2017

Re: AM2014/268 AWU reply submissions on drafting and technical issues in the Exposure Draft for the *Food, Beverage and Tobacco Manufacturing Award 2010*

Background

1. On 21 December 2016 the President, Justice Ross published Amended Directions directing parties to file submissions in reply to drafting and technical issues raised in Group 4 exposure drafts by 22 February 2017.
2. The following parties filed submissions on drafting and technical issues found in the Exposure Draft for the *Food, Beverage and Tobacco Manufacturing Award 2010* ('the Exposure Draft') as published on 16 November 2016:
 - Australian Workers' Union (**AWU**)¹
 - Australian Manufacturing Workers' Union (**AMWU**)²
 - United Voice (**UV**)³
 - Australian Federation of Employers and Industries (**AFEI**)⁴
 - Business South Australia (**BSA**)⁵
 - Australian Industry Group (**AIG**)⁶
3. The AWU submissions in reply appear below.

Reply submissions

Definitions

4. **Clause 2 [AMWU paragraph 8]:** We agree with the AMWU submission that the definition of *default fund employee* be retained.

¹ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014268-sub-awu-200117.pdf>

² <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014268-sub-amwu-180117.pdf>

³ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014261-sub-uv-161216.pdf>

⁴ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014256andors-sub-afei-180117.pdf>

⁵ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014-256andors-sub-bussa-180117.pdf>

⁶ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014258andors-sub-aig-180117.pdf>

Coverage

5. **Clause 4** [AMWU paragraph 10]: We agree with the AMWU submission that the definition of *Food, Beverage and Tobacco Manufacturing* should be relocated to clause 2.
6. We also support the proposed drafting of clause 4 submitted by the AMWU.

Facilitative provisions

7. **Clause 7.2(a)** [AMWU paragraph 13; UV paragraph 3; BSA paragraph 3.2; AIG paragraph 147; AFEI paragraph 28]: We agree with all submissions that the reference to clause 22.9 in the list of facilitative provisions should be replaced with a reference to clause 22.9(d).
8. **Clause 7.2(a)** [BSA paragraph 3.2]: We agree with the BSA submission that the references to clauses in the table at clause 7.2(a) should be presented in order of appearance in the award.
9. **Clause 7.2(a)** [AIG paragraph 148]: We disagree with the AIG submission that clauses 24.10 and 24.13 should be removed from the table at clause 7.2(a).
10. These clauses enable certain processes by agreement between an employer and an individual employee. They belong in the table at clause 7.2(a).

Additional safeguard

11. **Clause 7.4(c)(i)** [AIG paragraph 155 & 156]: We agree with the AIG submission that the reference to clause 12.3(c) in the table at clause 7.4(c)(i) should be a reference to clause 12.3(d).
12. We agree with the AIG submission that the reference to clause 12.4(b) in the table at clause 7.4(c)(i) should be a reference to clause 12.4(c).

Full-time employment

13. **Clause 8** [AMWU paragraph 14]: We agree with the AMWU submission that the words "*in this award*" be re-inserted in clause 8.

'Start' replacing 'commence'

14. **Clauses 9.3(c), 12.5, 23.1(b), 23.1(c), 23.5(c) & 23.5(d)** [AMWU paragraph 16]: The AWU also supports 'start' replacing 'commence' throughout the award to maintain uniformity.

Apprentices

15. **Clause 11.1** [AMWU paragraph 19]: We agree with the AMWU submission that a new clause be inserted that specifies the maximum probationary period of an apprentice. We support the wording proposed by the AMWU.

Adult employee minimum wages

16. **Clause 14.1(a)** [AIG paragraph 166]: We disagree with the AIG submission that the table under clause 14.1(a) purports to require the payment of the minimum weekly rate to all employees regardless of hours worked. The clause directly following – 14.1(b) – states that the weekly amounts in clause 14.1(a) relate to 38 hours of work.

Apprentice minimum wages

17. **Clause 15.1** [BSA paragraph 3.5]: We agree with the BSA submission that the minimum hourly wage in column 4 of the table has been incorrectly rounded to \$15.66. It should be rounded to \$15.67.

Damage to clothing, spectacles and hearing aids

18. **Clause 20.2(d)** [AIG paragraph 170]: We agree with the AIG submission that clause 20.2(d) is repetitive. We support the AIG's suggested redrafting with the following amendment:

"The employer is liable for ~~the~~ replacement, repair or cleaning where an employee suffers damage to, or soiling of, clothing or other personal equipment, including spectacles and hearing aids, as a result of..."

Transport of employees

19. **Clause 22.13** [AMWU paragraph 28]: We agree with the AMWU that clause 22.13 retain the words "*suitable transport*" from the Current Award.

Rates for shiftworkers

20. **Clause 23.3(d)** [AIG paragraph 179]: We disagree with the AIG submission that the operation of clauses 23.3(d) and 23.1(e) amounts to a substantive change from the Current Award provision.

21. There is no difference in entitlement caused by the rearranging of Clause 31.3(d)(iii) of the Current Award, which states that an employee, during an engagement described in clause 31.3(d) is to be paid:

*“...30% extra for **all time worked** during ordinary working hours **on such night shift**”* (emphasis added)

22. In the Exposure Draft, an engagement described in clause 31.3(d) of the Current Award is now given the title '*permanent night shift*' by clause 23.1(e), and clause 23.3(d) requires the same 30% allowance to be paid to those on permanent night shift.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'ZD', with several horizontal strokes underneath.

Zachary Duncalfe
NATIONAL LEGAL OFFICER