



Australian Federation of Employers and Industries (AFEI)

Submissions on 4 Yearly Review of Modern Awards  
Revised Exposure Draft: Funeral Industry Award – AM2014/269

21 April 2017

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1. These submissions are made pursuant to the direction of President Ross of 31 March 2017 in response to the revised Exposure Draft for the *Funeral Industry Award 2010* (the **Exposure Draft**).

**Item 12**

2. At Clause 18.6 of the Exposure Draft parties are asked to confirm whether the overtime penalty for shift workers is calculated on the minimum hourly rate or a rate inclusive of shift loadings. AFEI submits the rate should be the minimum hourly rate. Acknowledging, however, that shift workers may be entitled to receive all purpose allowances, AFEI would support retaining the word ‘applicable’ but inserting the word ‘minimum’ directly afterwards.
3. The afternoon shift penalties in clause 18.5 of the exposure draft are payable only for ordinary hours of work. Clause 18.5(b) reads “A *shiftworker on a non-continuing afternoon shift will be paid 150% of the minimum hourly rate **for all ordinary hours worked during the shift.***” (our emphasis added).
4. Further, the overtime penalty in clause 18.6 is payable for work “in excess of, or outside the ordinary working hours in Clause 18.2...” The Exposure Draft and the current Award clearly contemplate that overtime penalties are payable in circumstances that differ from those in which shift loadings applies. The Award provisions do not have the effect of compensating employees twice.

5. The AWU note in their submission that Clause 18.6 of the Exposure Draft largely reflects clause 9.6.2 of Schedule A to the *Funeral Industry Award 2003 (The Victorian Award)* which reads:

*Subject to 9.6.3 of this Schedule, shift workers for all time worked in excess of or outside the ordinary working hours of shift workers in 9.2 of this Schedule, or on a shift other than a rostered shift, will be paid at the rate of time and a half for the first three hours and double time thereafter.*

6. The AWU has neglected to note that clause 9.6.5 of the Victorian Award provides as follows:

*The rates prescribed in 6.2 are in substitution for, and not cumulative on, the shift premiums prescribed in 9.5 of this Schedule.*

7. AFEI submits that the reference to '6.2' is clearly a typographical error, as clause 6.2 relates to a Protective Clothing allowance and does not prescribe 'rates'. This should instead be read as '9.6.2'. Accordingly, it is clear that under the Victorian Award Funeral Directors working overtime received an overtime penalty in substitution for the shift penalty.

## **Items 15 and 16**

8. At Clause 19 of the Exposure Draft parties are asked to confirm how the minimum engagements in Clauses 19.1(b), 19.4(a) and 19.4(b) interact with those provided for part-time and casual employees in Clauses 10.5 and 11.3.
9. Clause 10.5 provides that a part-time employee must be rostered for a minimum of 3 consecutive hours on any shift, and Clause 11.3 provides that a casual employee must be paid for a minimum of four hours' work for each time they are required to attend work.
10. Clause 19.1(b) provides a minimum payment of 1 hour's pay for an employee recalled to work overtime before 7.00am or after 7.00pm. Clause 19.4(a) provides a minimum payment of 2 hours for an employee performing removal work between 7.00pm and midnight and Clause 19.4(b) provides the same for removal work between midnight and 7.00am.
11. AFEI submits that the more specific minimum engagement, that is the minimum engagement in clause 19.1(b), 19.4(a) or 19.4(b) will apply instead of the minimum engagement in clause 10.5 or 11.3. A casual or part-time employee recalled to work overtime, or required to perform removal work, is already receiving additional compensation for performing this work. Requiring an employer to make payment for 3 or 4 hours at a rate inclusive of a 150% or 200% penalty would effectively mean that employees are compensated twice.