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NATIONAL OFFICE
Level 10, 377-383 Sussex Street Sydney NSW 2000
T: (02) 8005 3333 F: (02) 8005 3300
E: members@nat.awu.net.au W: www.awu.net.au
Members Hotline: 1300 885 653
Daniel Walton National Secretary



ABN 28 853 022 982

IN THE FAIR WORK COMMISSION

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

Funeral Industry Award
(AM2014/269)

Technical and Drafting issues

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Lodged by	The Australian Workers' Union		
Address for service	Level 10, 377 – 383 Sussex Street, Sydney, NSW, 2000		
Telephone	(02) 8005 3333	Contact email:	nat.office@nat.awu.net.au
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 *Funeral Industry Award* (AM2014/269).

Technical and Drafting issues

Clause 5 – Effect of variations made by the Fair Work Commission

3. Clause 5 of the exposure drafts says,

“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.”

4. This is a standard clause which appears in exposure drafts of all Modern Awards currently under review. The clause was inserted into exposure drafts at clause ‘1 *Title and Commencement*’ after the Full Bench Decision in [2014] FWCFB 9412¹. However, in the current exposure draft the clause appears as a standalone clause at 5.
5. It is our submission that the clause should be moved under clause ‘1 *Title and Commencement*’ and numbered as 1.2.

Clause 14 – Breaks

6. In response to the Commission's questions on, which breaks are paid and which are unpaid, we outline our response below.
7. The rest breaks at clauses 14.1 and 14.2 are paid. The meal break at clause 14.3(a) is unpaid, but pursuant to clause 14.3(b) if an employee is required to work during their normal meal break that employee will receive 150% for all time worked during the meal break.

¹ Paragraph [10] to [11] of [2014] FWCFB 9412.

Clause 16.3(c) – Expense-related allowances – Uniform allowance

8. All employees and not just full-time employees, who are required to wear a uniform, must be reimbursed the cost of purchasing and laundering the uniform. Therefore, the term ‘full-time must be deleted from clause 16.3(c).

Clause 18.6 – Shiftwork – Overtime for shift workers

9. In relation to the Commission’s question we submit that the rate ‘applicable rate’ refers to the shift rate, including the shift penalty at 18.5.

Clause 19 – overtime

10. In regards to the Commission’s questions, we submit that when an employee is recalled back to work after finishing work, the minimum engagement of 4 hours must apply as it is a second engagement, this will also ensure consistency with clause 10.5 and 11.4 of the exposure draft.

Clause 19.1(a) – Overtime – Payment for overtime- other than shiftworkers

11. The clause in the exposure draft needs to include the term ‘appropriate’, so it can state as follows,

“Where an employee is recalled to work before 7.00 am or after 7.00 pm for other than arranged overtime, the employee will be paid a minimum of one hour’s pay at the ‘appropriate’ overtime specified in clause 19.1(a) on each occasion the employee is recalled to work overtime.”

12. The term ‘appropriate’ is necessary as it is in the current clause at 24.2(b) and also overtime payments Monday to Saturday is 150% for the first three hours and 200% thereafter, on Sundays and Public holidays it is 200%. Therefore, if an employee is asked to return to work on a Sunday or a public holiday, that employee would be entitled to 200% for all overtime worked and not 150% for the first 3 hours and 200% thereafter. For these reasons, we submit that the term ‘appropriate be retained in the exposure draft clause.

Clause 20 – Penalty rates

13. In relation to the Commission’s question regarding minimum engagement period we refer to our submissions above at paragraph [10].

END

The Australian Workers' Union