

IN THE FAIR WORK COMMISSION

Matter No: AM2014/269

Section 156 - Four Yearly Review of Modern Awards – Funeral Industry Award 2010

SUBMISSION

UNITED VOICE

1. This submission is made pursuant to the direction of the President, Justice Ross, on 26 August 2016. This submission is made in reply to a number of submissions concerning technical and drafting matters in the exposure draft of the *Funeral Industry Award 2010* (*‘the Award’*).
2. All references in this submission are to the exposure draft, unless otherwise specified.
3. United Voice relies on its submissions of 16 December 2016.

Clause 16.3 (c) – Uniform allowance

4. In its submission of 18 January 2017, the Australian Federation of Employers and Industries (*‘AFEI’*) suggests that the uniform allowance is only paid to full-time employees. This clause applies to all employees. While the current award does refer to a *‘full-time employee’* at clause 15.8, the clause must be read in conjunction with other relevant clauses of the Award.
5. First, part-time employees receive *‘on a pro-rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work’* under clause 10.2 (c) (10.4 (a) (iii) of the current Award). Therefore, a part-time employee is entitled to be reimbursed for the cost of uniforms under the uniform allowance clause.
6. Second, the Award does not prescribe that the casual allowance is paid in lieu of any entitlement. Absent a specific exclusion, it should be assumed that a condition in this Award applies to a casual employee. Given that the uniform allowance is paid to part-time employees, there is no reason to suggest that it is not paid to casual employees.

Clause 18.4 – Method of working shifts

7. AFEI and the Australian Business Industrial and the NSW Business Chamber ('ABI') submit that the reference to clause 27 is unnecessary and should be deleted from the exposure draft. United Voice opposes this submission.

Clause 18.6 – Overtime for shift workers

8. AFEI and ABI submit that the '*applicable rate*' referred to in clause 18.6 should be defined as '*the minimum hourly rate*'. This would be a substantial variation to the Award. The words of the clause do not support the contention that '*applicable rate*' means '*the minimum hourly rate of pay*'. The applicable rate means the rate of pay that the employee would have earned if they worked ordinary hours at the time they were working overtime. This necessarily includes the relevant shift rate and any all-purposes allowances. This is the only possible interpretation of the Award.
9. If a shift worker's overtime rate is calculated using the minimum hourly rate of pay then their entitlement will be significantly less than that of a day worker. Clause 24.4 of the current award provides for overtime for employees other than shift workers. That clause provides that the employee's '*ordinary rate*' is used to calculate overtime. This is a more favourable entitlement than an overtime rate calculated from the minimum hourly rate of pay. It seems unlikely that the Commission would set a less favourable overtime entitlement for shift workers than other employees. The overtime entitlement of a shiftworker should be equivalent to that of other employees.
10. The use of different terminology suggests that the entitlements for day workers and shift workers are different. Moreover, it is unlikely that the Commission would have intended for the words '*applicable rate*' to mean ordinary rate of pay. If that was the case, then the overtime provisions for shift workers would have expressly referred to the ordinary rate of pay.
11. The use of the words '*applicable rate*' suggests that the rate paid to the employee may vary from time to time or in different situations. An employee's minimum rate of pay will not vary. If the clause truly referred to the '*minimum hourly rate of pay*' then the word '*applicable*' would be otiose. An employee's shift rate (calculated from their ordinary rate of pay) will vary.

Clause 20 – Penalty rates

12. ABI submits that the minimum engagements for Saturday and Sunday work provided for by clauses 20.1 (a) (i) and 20.1 (b) covers the field for minimum engagements on Saturday and Sunday. United Voice opposes ABI's position and reiterates paragraphs [10] – [14] of its submission of 16 December 2016.

**UNITED VOICE
22 FEBRUARY 2017**