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Fair Work Act 2009
FAIR WORK COMMISSION
s. 156 – 4 yearly review of modern awards – award stage

AM2019/17

AWU SUBMISSIONS IN REPLY – TRANCHE 3 EXPOSURE DRAFTS

BACKGROUND

1. On 29 January 2020, a Full Bench constituted to finalise exposure drafts arising from the 4-yearly review of modern awards issued a procedural Decision.¹
2. Attachment A of the Decision identified awards falling within Tranche 3 of the finalisation process. The Decision includes directions for the filing of submissions concerning Tranche 3 exposure drafts.
3. Parties filed submissions concerning Tranche 3 exposure drafts on 6 March 2020.
4. On 23 March 2020, a Full Bench of the Commission published a Background Paper on the Tranche 3 exposure drafts, which expresses a number of provisional views of the Full Bench and poses some questions in response to the submissions by the parties.
5. The submissions in reply of The Australian Workers' Union (**AWU**) are below.

Timing Issues

6. The AWU does not support the submissions of AIG requesting a period of at least 3 months between final iterations of the exposure drafts and the date upon which they come into operation.
7. The AWU did not experience any issues due to the timeline that was adopted in the Tranche 2 awards.

¹ [2020] FWCFB 421.

Amusement, Events and Recreation Award

Overtime for Casuals

8. Although the AWU does not necessarily oppose the provisional view of the Commission at paragraph [22] of the Background Paper, the AWU notes that the 29 January 2020 Decision² stated that the Commission intended to:

“...remove the word ‘ordinary’ from the reference to ‘ordinary hours’ in relation to the casual loading where the current award does not limit the application of the loading to ordinary hours.”³

9. As submitted by the AWU in the *Overtime for Casuals* proceedings,⁴ the current *Amusement, Events and Recreation Award 2010* does not limit the application of the casual loading to ordinary hours. The Award does not expressly exclude the application of the casual loading to overtime hours.
10. Accordingly, the removal of the word ‘ordinary’ from clause 11.5 of the exposure draft is consistent with the Decision of the Full Bench.

Schedule C

11. The AWU agrees with Live Performance Australia (**LPA**) that exhibition employees can be employed at Grades 2, 4 and 5 only, and accepts the provisional view of the Commission at paragraph [31] of the Background Paper.

Professional Golfers Association

12. The AWU does not oppose the substantive claim of the Professional Golfers Association for this award.

Horse and Greyhound Training Award

Clause 18.3

13. The AWU does not seek any amendments to clause 18.3 other than the amendment of the cross-reference from clause 18.2(a) to clause 18.2 as a whole.
14. The cross-reference to clause 18.2(a) alone (and therefore excluding the annual leave loading in clause 18.2(b)) is inconsistent with s.90(2) of the Fair Work Act, which states that an employee who has a period of untaken annual

² [2020] FWCFB 421

³ Ibid at paragraph [4]

⁴ AWU Submission to AM2017/51, 17 January 2020

leave on termination is to receive the amount he or she would have received had the employee taken the period of leave paid out on termination.

15. The Award provides that an annual leave loading of 17.5% is payable on periods of leave. The current drafting of clause 18.3 would result in employees being paid out their accrued leave less the 17.5% loading and therefore they would not receive the amount that they would have if they had taken the leave during employment.

16. As s.90(2) is within Part 2-2 of the Fair Work Act, breach of this clause is a breach of the National Employment Standards.

Horticulture Award

Clause 11.3

17. The AWU does not oppose the word 'ordinary' that is currently struck out in clause 11.3 to be reinserted.

Clause 10.2

18. The AWU does not support the AIG's proposed addition of the words, "Subject to clause 15.2" to clause 10.2. This proposed addition is unnecessary and is based on an incorrect understanding of clause 15. Contrary to the submissions of AIG, clause 15 *does* entitle pieceworkers to minimum rates of pay – the minimum rates of pay for pieceworkers is found at clause 15.2.

19. As previously submitted by the AWU, the correct cross reference to be inserted into clause 10.2 is to clause 15. Clause 15 entitles adult workers to adult rates, pieceworkers to piecework rates and juniors to junior rates. Therefore, a cross reference to this clause will enable an employee or employer to determine the applicable rate to which the part-time employee is entitled – be they adult, junior or pieceworker.

20. In response to the submission of AIG that clause 15 does not prescribe 'ordinary hourly rates', the AWU suggests the following amended clause 10.2 (changes underlined):

"For each ordinary hour worked, a part-time employee will be paid no less than the ~~ordinary~~ minimum hourly rate for the relevant classification in clause 15, plus any applicable all-purpose allowances."

Wine Industry Award

Clauses 17.4 and 17.6(d)

21. It appears that the Commission has agreed with submissions of AIG and formed a provisional view to accept submissions of SAWIA in relation to amendments proposed to clauses 17.4 and 17.6(b) that would respectively result in different outcomes.

22. The AWU accepts the provisional view of the Commission at paragraph [458] of the Background Paper.

Clauses 22.1(b) and 22.1(c)

23. The AWU does not oppose the removal of the words, 'in clause 13.6' in clauses 22.1(b) and 22.1(c).

END

7 APRIL 2020