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

AM2019/17

**AWU SUBMISSION - FIRST TRANCHE EXPOSURE DRAFTS – FUNERAL
INDUSTRY AWARD – SHIFTWORK OVERTIME RATES ISSUE**

BACKGROUND

1. On 24 October 2019, a Full Bench constituted to finalise exposure drafts arising from the 4-yearly review of modern awards issued a Decision concerning Tranche 1 awards.¹
2. At paragraph [212] of the Decision, the Full Bench indicated it would seek further submissions regarding a potentially complex issue concerning overtime rates for afternoon shiftworkers in the *Funeral Industry Award 2010* (“**Funeral Award**”). Parties were requested to provide any submissions by 8 November 2019.
3. The Australian Workers’ Union’s (“**AWU**”) submissions concerning this issue are below.

THE CORRECT APPROACH TO CALCULATING SHIFTWORK OVERTIME RATES HAS ALREADY BEEN DETERMINED IN THE AWARD REVIEW

4. The Full Bench constituted to deal with technical and drafting issues arising in the 4-yearly review of modern awards has previously considered and determined the correct approach to calculating overtime rates for shiftworkers under the Funeral Award.
5. The following Decisions from that Full Bench are relevant:
 - [2018] FWCFB 1548: A provisional view was expressed that the afternoon shift penalty rate and the relevant overtime penalty rate should both be calculated on the minimum hourly rate and then added together (see [431] to [454]);

¹ [2019] FWCFB 7173.

- [2018] FWCFB 4175: The Full Bench again expressed a provisional view that a cumulative approach should be applied to the calculation of shift penalty rates and overtime rates for shiftworkers (see [260] to [279]); and
- [2018] FWCFB 6852: The Full Bench decided not to depart from its provisional view (see [50] to [54]).

ADDITIONAL ISSUES – DO WEEKEND AND REMOVAL RATES APPLY TO SHIFTWORKERS

6. The Full Bench constituted to deal with technical and drafting issues arising in the 4-yearly review of modern awards also gave some consideration to the interaction between shiftwork conditions, weekend rates and removal rates.
7. In its 7 August 2018 Decision², that Full Bench appears to have formed the view that the overtime rates for shiftworkers in clause 22.6 of the current Funeral Award apply in all circumstances and to the exclusion of the weekend rates prescribed in clause 24.1 of the current Funeral Award (aside from public holidays given clause 22.9 of the current Funeral Award). This inference arises from the rates table appearing in paragraph [277] of the Decision and the content in paragraph [278].
8. Whilst the AWU does not necessarily agree with this construction of the current Funeral Award (noting the words “other than shiftworkers” do not appear in the heading of clause 24.1 of the current Funeral Award whereas those words are included in the headings for clauses 24.2 and 24.3), the AWU acknowledges it appears this issue has been decided by a Full Bench during the award review and the tables below proceed on this basis.
9. In relation to removal rates, the Full Bench appears to have determined these rates do not apply to the exclusion of shiftwork overtime rates.³

WHAT CHANGES SHOULD BE MADE TO THE EXPOSURE DRAFT TO IMPLEMENT THE FULL BENCH’S DECISIONS

10. The AWU submits the following amendments should be made to the exposure draft to implement the Full Bench decisions identified above:

² [2018] FWCFB 4175.

³ [2018] FWCFB 4175 at [300]. Note the shiftwork overtime rates appeared in clause 18.6 of the exposure draft when the Decision was issued in August 2018 – see: <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/exposure-draft-funeral-revised-260318.pdf>

- (i) Schedule A.1.4: The overtime rates table for shiftworkers should be amended to the following effect (parts of table not relevant to submission omitted):

A.1.4 Full-time and part-time shiftworkers – overtime

Classification	Day shift – minimum hourly rate	Afternoon shift – Monday to Sunday – first 3 hours	Afternoon shift – Monday to Sunday – after 3 hours	Afternoon shift – work on an RDO when relief employee absent	Non-continuing afternoon shift – Monday to Sunday – first 3 hours	Non-continuing afternoon shift – Monday to Sunday – after 3 hours	Non-continuing afternoon shift – work on an RDO when relief employee absent	All shiftworkers – public holiday – all day
	100%	170%	220%	220%	200%	250%	250%	200%

An explanatory footnote referring to clause 20.6(b) can be added for the ‘work on an RDO when relief employee absent’ rates.

- (ii) Schedule A.1.5: The table can be deleted.
- (iii) Schedule A.2.2: Amend the heading of the ordinary hours column to read “Day shift – ordinary hours”. Delete the ‘Monday – Friday – first 3 hours’ and ‘Monday – Friday – after 3 hours’ columns and insert a ‘Public holiday – all day’ column with a rate of ‘225%’.



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25 OCTOBER 2019