

From: Michael Robson [<mailto:Michael.Robson@unitedvoice.org.au>]
Sent: Friday, 16 December 2016 1:46 PM
To: AMOD
Subject: Group 4 Exposure Drafts - unless advised publish after 4 pm 20/12

Dear Associate,

Please United Voice's submissions in the following Awards:

- *Car Parking Award 2010.*
- *Cemetery Industry Award 2010.*
- *Food, Beverage and Tobacco Manufacturing Award 2010.*
- *Funeral Industry Award 2010.*
- *Water Industry Award 2010.*
- *Registered and Licenses Clubs Award.*

Best regards,

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IN THE FAIR WORK COMMISSION

Matter No: AM2014/261

Section 156 - Four Yearly Review of Modern Awards – Car Parking Award 2010

SUBMISSION

UNITED VOICE

1. This submission is made pursuant to the direction of Justice Ross on 26 August 2016. This submission concerns technical and drafting matters in the exposure draft of the *Car Parking Award 2010*.
2. All references in this submission are to the exposure draft, unless otherwise specified.

Clause 7 – Facilitative provisions

3. Clause 7.2 is misnumbered clause 5.2
4. The table of facilitative provisions at clause 7.2 incorrectly references clause 15.2 as providing for changes to the roster by agreement with an individual, the correct clause is 15.3.

Clause 11 – Casual employment

5. The Commission has asked the parties to clarify if the minimum engagement at 11.6 applies per day or to each of multiple starts per day.
6. It is clear from the text of the condition that the minimum engagement applies to each start per day.
7. Current award clause 10.5 (e) provides that a ‘casual employee must be paid for a minimum of three hours per day for each start per day’.
8. If the minimum engagement did not apply to each of multiple starts per day, the words ‘for each start per day’ would be meaningless. If the words had no work to do, they would not have been included in the clause.

Clause 18.3 (c) – Accommodation allowance

9. Clause 18.3 has different language from the exposure draft that may change the entitlement. Clause 15.5 (a) of the current award provides:

An employee whose employment may necessitate them being absent from their home and therefore being unable to conveniently return to such home on any day will be paid a minimum of eight hours of work for each day they are absent within their ordinary hours of work, plus penalty rates where applicable for actual time worked on any such day. [Emphasis added].

10. Clause 18.3 uses the words ‘if an employee is living away from home’ instead of ‘being absent from their home’.
11. The use of ‘living away from home’ suggests a more permanent or substantial period away from home than that suggested by ‘absent from their home’. This change in wording may be used to deny the entitlement to employees who are absent from their home for short periods of time.
12. The current wording should be maintained.
13. Further, the Commission has asked the parties to clarify the operation of the minimum payments under clause 18.3 (d). The Commission’s proposition that the 8 hours minimum engagement applies to a rostered working day and the 12 hours minimum engagement applies to a non-rostered working day is correct. However, the 12 hours minimum engagement would also apply where a part-time employee is absent and working outside of their ordinary hours of work as agreed under clause 10.2. or where a day worker is working outside of the span of hours.

Clause 21 – Shift allowances

14. The Commission has asked the parties if shift loading is only payable for the hours worked within the spans specified at 21.1 (a) or (b) or if the loadings are payable for a full shift that includes those hours.
15. The loadings are paid for full shifts. Clause 21.2 provides that an employee ‘who works shiftwork must be paid for each hour worked during an afternoon shift or a night 11.2% of the minimum hourly rate for the appropriate classification’. The words ‘each hour worked’ show that the entitlement is to be paid the shift loading for the full shift.
16. The Commission has also asked whether employees who work shiftwork under clause 21.2 are considered to be ‘shiftworkers’ for the purpose of 14.3. Yes, and employee who works shiftwork under clause 21.2 are shiftworkers for the purpose of 21.2. This is self-evident from the text and there is no need to change any reference.

Clause 23.3 – Payment and Loading

17. At clause 23.3 the Commission has asked the parties the following questions:
 - a. 'Is the loading under clause 23.3 (b) 17.5% of the minimum rate + full first aid allowance or 17.5% of (wage + first aid allowance).
 - b. 'Are shift workers entitled to first aid allowance (where applicable) while on annual leave?'
18. The loading paid under clause 23.3 (b) is 17.5 per cent is '17.5% of (wage + first aid allowance)'. Further, Shift workers are entitled to the first aid allowance (where applicable) while on annual leave.
19. The underlying principle of this clause is that an employee should not be disadvantaged by taking annual leave.
20. Under clause 25.8 (a) of the current award, employees are entitled to 'the amount the employee would have earned for working their ordinary hours had they not been on leave' instead of the base rate of pay referred to in the NES.
21. Under current award clause 15.1, the first aid allowance is paid:

An employee who has been trained to render first aid, who holds a current first aid qualification and who is appointed by the employer to perform first aid duty will be paid an additional 2.54% of the standard rate per week if a full-time employee or pro rata if a part-time or casual employee.
22. This amount is paid as either a weekly amount for a full-time employee or pro-rata for an employee who works less than full-time hours. It is not paid compensation for an expense or a disability. It is remuneration for an additional duty that is not compensated by the minimum rate for an employee's classification. The allowance is therefore paid 'for working ordinary hours'.
23. Clause 25.8 (b) of the current award provides that during annual leave an employee will be paid 'an additional loading of 17.5% of the employee's minimum rate prescribed in clause 14 – minimum wages, plus first aid allowance where appropriate or if they were a shiftworker prior to entering leave, their shift penalty, whichever is greater'.

24. The reference to the first aid allowance is essentially an aid to the understanding of the clause. The first aid allowance is the only amount that a day worker would 'have earned for working their ordinary hours had they not been on leave'.
25. Further, a shift worker is entitled to be paid the first aid allowance while on annual leave. If the employee were not paid the shift allowance, they would be disadvantaged compared to when they were not on leave. This would be inconsistent with the operation of the clause.
26. In response to the Fair Work Ombudsman's question, the two entitlements are to be compared over the entire period of annual leave.

United Voice

21 December 2016

IN THE FAIR WORK COMMISSION

Matter No: AM2014/262

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

SUBMISSION

UNITED VOICE

1. This submission is made pursuant to the direction of Justice Ross on 26 August 2016. This submission concerns technical and drafting matters in the exposure draft of the *Cemetery Industry Award 2010*.
2. All references in this submission are to the exposure draft, unless otherwise specified.

Clause 4 – Coverage

3. The Commission has asked if the Award should include a definition of ‘cemetery and crematoria industry’. United Voice has not noted any issues regarding the coverage of the Award. We would not oppose the insertion of a definition, but do not believe that there is any pressing need to insert a definition.

Clause 15.2 – wage related allowances

4. The Commission has asked if the industry allowance applies for all purposes under the Award. The industry allowance does apply for all purposes of the award.

United Voice

21 December 2016

IN THE FAIR WORK COMMISSION

Matter No: AM2014/268

Section 156 - Four Yearly Review of Modern Awards – Food, Beverage and Tobacco Manufacturing Award 2010

SUBMISSION

UNITED VOICE

1. This submission is made pursuant to the direction of Justice Ross on 26 August 2016. This submission concerns technical and drafting matters in the exposure draft of the *Food, Beverage and Tobacco Manufacturing Industry Award 2010* ('the Award').
2. All references in this submission are to the exposure draft, unless otherwise specified.

Clause 7.2 – Facilitation by individual agreement

3. The table of facilitative provisions at clause 7.2 incorrectly references clause 22.9 as providing for changes to the roster by agreement with an individual, the correct clause is 22.9 (d).

Clause 7.3 – Facilitation by majority or individual agreement

4. The table of facilitative provisions at clause 7.3 incorrectly references 10.6 (f) of the exposure draft. This provision is not found in the current award, we refer to our comments on clause 10.6 below.
5. The reference to clause 13.1 would better read clause 13.1 (b).

Clause 10.6 – Casual conversion to full-time or part-time employment

6. Clause 10.6 departs significantly from the current award provision. We cannot find any record of a decision varying this clause. The current clause should be retained.
7. We note that this provision is the subject of claims made by the ACTU in *AM2014/197 – Casual Employment*.

Clause 12.2 – Ordinary hours of work – day workers

8. The Fair Work Ombudsman has asked if a definition of shiftworker should be inserted into the Award. They note that an employee 'who at times finishes work after 6.00 pm on a weekday could be considered a day worker or an afternoon shiftworker'.
9. There is no need for a definition, as a worker's status is defined by reference to their ordinary hours of work. We refer the Commission to clause 12.3 and clause 12.4 which define the ordinary hours of work for a continuous and non-continuous shiftworker.

Clause 24.5 – Annual leave loading

10. The Fair Work Ombudsman asks if the comparison between what the worker the applicable shift loading and the annual leave loading is made on a daily basis or over the entire period of leave. The comparison is over the entire period of leave.

United Voice

21 December 2016

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 Justice Ross on 26 August 2016. This submission concerns 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.

Clause 14 - Breaks

3. The Commission has asked the parties to clarify which breaks are paid and unpaid.
4. Clause 14.1 provides for a 'Rest after early morning work'. An employee to whom this clause applies is entitled to 'eight consecutive hours off duty after finishing work without loss of pay for ordinary hours occurring during this period'. This period may be paid or unpaid, depending on the employee's roster.
5. Clause 14.2 provides for rest periods. This is a paid break.
6. Clause 14.3 provides for a meal break. This is an unpaid break.

Clause 16.3 (c) – Uniform allowance

7. The Commission asked if this allowance applied to all employees, or just to full-time employees. This clause applies to all employees. 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).

Clause 18.6 – Overtime for shiftworkers

8. The Commission has asked the parties to confirm whether or not the 'applicable rate' in this clause refers to the shift rate or the minimum hourly rate. The use of the words 'applicable rate' suggests that the rate referred to is variable. An employee's minimum hourly rate will

not vary. It unlikely that the Commission would refer to the ‘applicable rate’ if it meant the minimum hourly rate for the employee’s classification. Instead, overtime is calculates using the shift rate, which will be different at different times.

9. This contention is supported by the words of clause 24.4 of the current award. Clause 24.4 provides for overtime for employees other than shift workers. The clause uses the employee’s ‘ordinary rate’ to calculate overtime. These use of different terminology suggests that the entitlements are different, and that overtime rates of shift workers are in fact cumulative with their shift rate.

Clause 20.1 – Work on Saturday, Sunday or public holidays

10. The Commission has asked the parties how clause 20.1 (a) (i) and 20.1 (b) interact with the minimum engagement provisions for casual and part-time employees.
11. Under clause 10.5, a part-time employee has a minimum engagement of three hours. Under clause 11.3, a casual employee has a minimum engagement of four hours. These provisions seek to ensure that casual and part-time work has some regularity. It reduces the potential disruption to an employee’s life that may come with short shifts.
12. Simply, clause 20.1 is a penalty rate provision. Its purpose is to compensate the employee for the disability associated with weekend or public holiday work. These provisions achieve this objective by providing both a minimum engagement for weekend work and a loading on the employee’s pay.
13. Any interpretation of these provisions should give effect to these two objectives.
14. Clause 20.1 (a) (i) and clause 20.1 (b) provide for a minimum engagement of two hours on a Saturday or Sunday. This engagement applies to full-time employees who would not otherwise have a minimum engagement. The more beneficial minimum engagements for part-time and casual employees still apply on a Saturday.

United Voice

21 December 2016

IN THE FAIR WORK COMMISSION

Matter No: AM2014/289

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

SUBMISSION

UNITED VOICE

1. This submission is made pursuant to the direction of Justice Ross on 26 August 2016. This submission concerns technical and drafting matters in the exposure draft of the *Water Industry Award 2010* ('the Award').
2. All references in this submission are to the exposure draft, unless otherwise specified.

Clause 2 – Definitions

3. The Commission has asked if the reference to a shiftworker at clause 2 should be amended to reflect the reference to the NES at clause 20.2. United Voice does not believe that there is any substantive difference between either option.

Clause 11.2 – Casual loading

4. The Commission has merged current award clauses 10.5 (b) and 10.5 (c) into a single clause. The Commission has also changed wording regarding a casual employee's entitlement to payment for shiftwork, overtime and public holidays.
5. The reference to a full-time employee should be removed from clause 11.2 (b). The clause should instead specify that the penalties and loadings are not cumulative with the casual loading. We propose the following wording:

(b) penalties and loading payable for shift work, overtime and public holidays are not cumulative with the casual loading.

Clause 18 - Shiftwork

6. Clause 18.5 provides that an employer must not change the structure of a roster unless all affected employees are given four weeks notice or all affected employees agree to the change. The Commission asks how this interacts with the consultation clause of the Award.

7. Clause 18.5 supplements the entitlement to consultation in clause 16. The consultation clause does not provide an employee with a veto to any change to rosters or hours of work. Once the employer has consulted with the employees under clause 16, the employer may then give 4 weeks notice of the roster change or seek the agreement of the employees affected to implement the change sooner.

United Voice

21 December 2016