

Fair Work Commission
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22 February 2017

Re: AM2014/267 AWU reply submissions on drafting and technical issues in the Exposure Draft for the *Fast Food Industry Award 2010*

Background

1. On 21 December 2016 the President, Justice Ross published Amended Directions directing parties to file submissions in reply to drafting and technical issues raised in Group 4 exposure drafts by 22 February 2017.
2. The following parties filed submissions on drafting and technical issues found in the Exposure Draft for the *Fast Food Industry Award 2010* ('the Exposure Draft') as published on 16 November 2016:
 - Australian Workers' Union (**AWU**)¹
 - Shop, Distributive and Allied Employees Association (**SDA**)²
 - Australian Business Industrial and the NSW Business Chamber (**ABI & NSWBC**)³
 - Business South Australia (**BSA**)⁴
 - Australian Industry Group (**AIG**)⁵
3. The AWU submissions in reply appear below.

Reply submissions

Part-time employees

4. **Clause 10.1(c)** [AIG paragraph 81]: We disagree with the AIG submission that clause 10.1(c) is confusing and purports to deal with over-award payments.

¹ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014267-sub-awu-200117.pdf>

² <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014267-sub-sda-180117.pdf>

³ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014-256andors-sub-abinswbc-180117.pdf>

⁴ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014-256andors-sub-bussa-180117.pdf>

⁵ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014258andors-sub-aig-180117.pdf>

5. It is our understanding that clause 10.1(c) operates as a method of calculation of a part-time employee's pay, and ensures that part-time employees are not disadvantaged in terms of pay and conditions in relation to full-time employees. We oppose the removal of this clause.
6. Taking into account the concerns expressed by AIG, we submit the following amendment to clause 10.1(c):

*“(c) receives, on a pro-rata basis, **the minimum** pay and conditions equivalent to those of full-time employees who do the same kind of work.”*

Cold work disability allowance

7. **Clause 17.1(b)** [AIG paragraph 118]: We disagree with the AIG submission that the wording of clause 17.1(b) could result in an employee being eligible to receive the cold work disability allowance as long as the employee undertakes cold work ‘at some point in time’.
8. Clause 17.1(b)(i) states that to be eligible for the allowance, an employee must be “***principally employed on any day to enter cold chambers and/or to stock and refill refrigerated storages***” (emphasis added). It is our understanding that for a person to be principally employed to perform a certain task, that task must be a substantial part of his or her day, and not just undertaken ‘at some point in time’.

Travelling time reimbursement

9. **Clause 17.2(d)(ii)** [BSA paragraph 2.1; AIG paragraph 125]: We agree with both BSA and AIG that under the Current Award the travel time reimbursement is to apply to time spent travelling from the pickup point to work, and travelling from work back to the pickup point.

Overtime

10. **Clause 20.1(a)(i)** [AIG paragraph 128]: We oppose the AIG submission that the word ‘ordinary’ be inserted after ‘38’ each time it appears in clause 20.1(a). The Exposure Draft reflects the Current Award and we see no need to amend it.

Sunday work

11. **Clause 21.3** [BSA paragraph 2.2; ABI & NSWBC paragraph 12.1]: We agree with the BSA submission that clause 21.3 should be altered to provide clarity on the interaction between penalty rates and overtime

rates for Sunday work. We support the amendments to clause 21.3 proposed by BSA.

Full-time and part-time employees – ordinary and penalty rates

12. **Schedule A.1.1** [AIG paragraph 133]: We agree with the AIG submission that the words “Monday – Friday” be added under the “Evening work” headings.

Casual employees other than shiftworkers – ordinary and penalty rates

13. **Schedule A.2.1** [AIG paragraph 135]: We agree with the AIG submission that the words “Monday – Friday” be added under the “Evening work” headings.

Full-time and part-time junior employees – ordinary and penalty rates

14. **Schedule A.3.1** [AIG paragraph 136]: We agree with the AIG submission that the words “Monday – Friday” be added under the “Evening work” headings.

Casual junior employees – ordinary and penalty rates

15. **Schedule A.3.3** [AIG paragraph 137]: We agree with the AIG submission that the words “Monday – Friday” be added under the “Evening work” headings.

Yours Faithfully,



Zachary Duncalfe
NATIONAL LEGAL OFFICER