

Fair Work Commission

s.156 – 4 yearly review of modern awards

Fast Food Industry Award 2010

AM 2014/267

Reply Submissions, Exposure Draft



Shop Distributive and Allied Employees' Association

24 February 2017

1. The Shop Distributive and Allied Employees' Association (SDA) makes these submissions in response to the exposure draft released by the Fair Work Commission for the *Fast Food Industry Award 2010*, the submissions filed in reply to the drafting and technical issues and in accordance with the Amended Directions issued by Justice Ross on 21 December 2016.

Minimum Hourly Rate

2. The exposure draft includes at Schedule A a Summary of Hourly Rates of Pay. This summary helpfully includes penalty rates, overtime rates and loadings. The current award does not provide an equivalent summary. This has the potential to cause confusion in light of the exposure draft referring to minimum rates throughout the body of the award.
3. In particular reference to "minimum hourly rate" at clauses 2, 10.7 and 11.1(a) may be viewed as confusing.

Part -time employees

4. Clause 10.1(c) of the exposure draft is a new provision. The inclusion of this provision adds clarity and certainty. It is consistent with the provisions of the award.
5. The SDA notes the submissions made by AiG¹ particularly in respect of the AiG's assertion that 10.1(c) "appears to require that a part-time employee receives, on a pro rata basis, over award terms and conditions to which a full time employee is entitled..." (PN 83)
6. The SDA agrees with the amended clause proposed by the AWU:

10.1

(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

Clause 11.1 – Casual employment

7. The exposure draft includes the additional words "and paid" to the definition of casual employee at clause 11.1. The SDA has no objection to the addition of these words. The SDA notes the opposition to the inclusion of these words from AiG at PN87 of their submissions.

Clause 12.4(a)(i) – Level 1

8. The SDA agrees with the submissions of AiG on this point. The SDA does not oppose the submission of AiG that 12.4(a)(i) is replaced with the wording from B.1.1. The SDA does suggest that the order (sequence) of the activities of B.1.1 is amended such that "receipt of orders" comes before "the preparation". This is generally in line with the sequence of activities at a fast food outlet.

Clause 13.4 - Ordinary Hours of Work

¹ AiGroup, Submission, Group 4D – 4F Exposure Drafts 18 January 2017

9. In its submissions (PN100) AiG identifies that due to the disaggregation of the current clause 25 Hours of work, reference at clause 13.4 of the exposure draft refers only to clause 13 and that this amounts to a substantive change. The SDA accepts AiG's position on this point.

Clause 17.1(b)(i) – Cold work disability allowance

10. The SDA does not agree with the submissions of AiG in respect of the cold work disability allowances at 17.1(b)(i) and (ii). The proposed clauses in the exposure draft add clarity. The removal of the words “while so employed” make clear that the allowance is paid for the day and not just for the time spent physically in the cold chamber.

Clause 17.2(d)(ii) and (ii) - Travelling time reimbursement

11. The SDA acknowledges that AiG have identified drafting within the exposure draft that clearly alters this entitlement. AiG has provided suggested wording for 17.2(d)(i) and (ii) (PN124 and PN127). The SDA submits that draft wording could be settled prior to or during conferences scheduled for March.

Clause 20.1(a)(i) - Overtime

12. The current overtime clause (clause 26.1) does not include the word “ordinary”. The SDA does not support AiG's submission that the word “ordinary” should be included. In the absence of a clear explanation as to why this amendment is sought the SDA is concerned about any unintended consequences.

Clause 20.2(a) – Monday to Saturday – all employees ; and 20.2(b) – Sunday – all employees

13. The SDA submits that full-time, part-time and casual employees are entitled to overtime in prescribed circumstances. Therefore the inclusion of “all employees” at clause 20.2(a) and 20.2(b) of the exposure draft merely identifies that all employees (i.e. permanent and casual) are entitled to the same overtime rates for Mondays to Saturdays and for Sundays. In contrast clause 20.2(c) identifies that the overtime rates for public holidays differ between permanent employees (250%) and casual employees (275%).

Schedules A.1.1, A.2.1, A.3.1 and A.3.3 – Monday to Friday

14. AiG submissions (PN 133 – 137) propose that the words “Monday to Friday” are included under the “Evening work” headings in the tables. The SDA does not oppose this amendment.