

Fair Work Commission
Terrace Tower, 80 William Street
East Sydney NSW 2011
By email: amod@fwc.gov.au

1 July 2016

Re: AM2014/260 AWU submissions on the exposure draft for the *Building and Construction General On-site Award 2016*

Background

1. On 10 May 2016 the President, Justice Ross published a Statement and Directions regarding a plain language pilot and Group 4 awards.
2. The Directions require the filing of submissions regarding drafting and technical issues in Group 4A, B and C exposure drafts by 30 June 2016.
3. The AWU's submissions in relation to the exposure draft for the *Building and Construction General On-site Award 2016* (Exposure Draft) as published on 20 May 2016 appear below.

Drafting and technical issues

4. Clause 2: It does not appear necessary to repeat the definition of "employee in charge of plant" in clause 2 given it already appears in clause 21.13.
5. Clause 12.2: The Exposure Draft poses the question of whether casual employees are entitled to the inclement weather provisions in clause 23. Casual employees are clearly entitled to the inclement weather provisions. This is not one of the entitlements that casual employees are excluded from in clause 12.2 and there is no indication in the wording used in clause 23 that the provisions do not apply to casual employees. The entitlements are applied to casual employees in the same manner as for other employees – that is, a casual employee will be credited with the hours specified in clause 23.8 depending on when they commence employment within the four week period.
6. Clause 12.5: The Exposure Draft poses a question regarding the calculation of the casual loading. The casual loading is applied to the rate calculated in

accordance with clause 19.3. If this does not occur, a casual employee will not receive 25% more than the minimum rate payable to a permanent employee. There is no basis for departing from the general rule established by the Commission in *4 yearly review of modern awards* [2015] FWCFB 6656 at [110].

7. Clause 16.12: The reference should be updated to “AS4774.1 – 2003 Work in compressed air and hyperbaric facilities – Work in tunnel shafts and caissons”.
8. Clause 16.12 (a) (iii): This provision is intended to prescribe a 30 hour week for the named classes of work as opposed to excluding them. The lower working hours is in recognition of the difficult nature of the work. We propose the following amendment to the first sentence in clause 16.12 (a) (iii): “A week’s work will be 30 hours per week, exclusive of crib time, in the following cases: ...”
9. Clause 17.2 (k): It appears the reference to clause 17.2 (e) is intended to be clause 17.2 (d).
10. Clause 18.1 (a): The Exposure Draft has reduced the current entitlement in clause 35.1 (a) by prescribing that the break will be 30 minutes as opposed to “no less than 30 minutes”.
11. Clause 18.3 (a),(b) and (e): Clause 35.3 of the *Building and Construction General On-site Award 2010* (the Award) contains a number of references to breaks “without deduction of pay” which have been changed to just “paid” breaks in the Exposure Draft. The current references to “without deduction of pay” should be retained because they make it clear that the break is paid at a rate which includes applicable overtime rates, penalty rates and shift loadings. In contrast, use of only the word “paid” can create ambiguity regarding the appropriate rate of pay.
12. Clause 19.2 (a): An example such as the following may assist with the application of this provision:

EXAMPLE

A Level 4 employee who supervises three Level 2 employees will receive an additional amount of 5.3% of the Level 4 rate.

A Level 4 employee who supervises two Level 2 employees and one Level 6 employee will receive an additional amount of 5.3% of the Level 6 rate.

13. Clause 19.2 (b): This should read: “by multiplying the amount prescribed in clause 19.2 (a)...”
14. Clause 19.3 (a) (ii): The following allowances specified in clause 19.3 (b) should also be included in the daily hire calculation:
- Clause 21.11: Air-conditioning industry and refrigeration industry allowances;
 - Clause 21.12: Electrician’s licence allowance; and
 - Clause 21.13: In charge of plant allowance.
15. Clause 19.5: This provision is clearly intended to apply for all purposes given its location in the minimum wages clause and the inclusion of the words “added to the base rate”. However, the intent could be more clearly communicated if the following words are added: “This amount will apply for all purposes of the award”.
16. Clause 19.6: The application of clause 19.6 (f) and (g) and the NES definitions of “base rate of pay” and “full rate of pay” is not entirely clear. Given a piecework employee must receive at least the relevant rates in the Exposure Draft which would otherwise apply, an option for consideration may be using the definition of “base rate of pay” contained in Regulation 1.09 of the *Fair Work Regulations 2009*.
17. Clause 19.12 (d): It appears this provision may need to be deleted due to the operation of s 154 of the *Fair Work Act 2009*.
18. Clause 23.9: In response to the question posed in the Exposure Draft, it appears this provision still has work to do in determining the 4 week period and should be retained.
19. Clause 28.4: We see no need to vary the current provision and note the CFMEU has developed a proposal to clarify overtime entitlements for casual employees during Conference proceedings.
20. Clause 28.8 (b): The reference to clause 28.8 (a) should be changed to clause 27.8 and 28.8 for consistency with clause 36.14 of the Award.
21. Clause 41.2 (a): The operation of these rates is not clear. It appears the intent of the General foreperson/supervisor wording may be for the receipt of the highest rate payable to a Foreperson/supervisor under the provisions above

plus the specified allowance. If this is correct, the alternative rate may not be required.

The adjustment of the rates in accordance with annual wage review decisions appears appropriate.

22. Clause 41.2 (b) and 41.5 (a): These provisions conflict in that clause 41.2 (b) potentially removes entitlements to overtime, shift loadings and other conditions. However, if these conditions are not applied, affected employees would be clearly disadvantaged which is contrary to clause 41.5 (a).



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