

30 November 2016

**Private & Confidential**

Registrar  
Fair Work Commission

By email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

Dear Registrar,

**Re: [2016] FWCFB 7254 - Revised Exposure Draft of the Fire Fighting Industry Award 2015**

We act on behalf of the United Firefighters Union of Australia.

We refer to the above mentioned matter and the Full Bench's request for feedback on the Revised Exposure Draft of the *Fire Fighting Industry Award 2015*.

**1. Clause 9. Ordinary hours of work and rostering—public sector**

The Full Bench has asked for the parties to clarify whether public sector employees can work on other than a shift roster (i.e. day work referred to in clauses 9.4(e) and 9.5(d))?

On 15 November 2016 in the decision of the Full Bench of the FWC in [2016] FWCFB 8025, the Full Bench inserted clause 22.4. Apart from work on "other than a shift roster" as provided for in the Modern Award as a result of the 15 November 2016 decision, there can be no work other than on the 10/14 Roster.

**2. Clause 20.1 Definition of overtime—public sector**

The Full Bench has asked the parties to comment on whether the reference to the "minimum weekly rate" in clause 20.1(c) should be to the "total weekly wage in clause 13"?

We repeat and rely on our client's submission filed and dated 18 November 2015 at paragraphs 11-12:

11. *The UFU submit that the reference to "minimum weekly rate" in clause 20.1(c) should be to the "total weekly wage in clause 13".*
12. *The intention of the clause is to prevent any additional payment for overtime where payment has already been provided as part of the "total weekly wage". The minimum weekly wage does not provide payment for overtime.*

**3. Clause 20.2 Definition of overtime—private sector**

The Full Bench has asked to clarify when overtime for shiftworkers, other than those on 10/14 roster, is payable. Is it payable at the same as for shiftworkers on 10/14 roster?

We repeat and rely on our client's submission filed and dated 18 November 2015 at paragraphs 13-15:

- "13. On page 25 of the exposure draft, parties are asked to clarify when overtime is payable to shift workers within the private sector who do not work on a 10/14 roster.
14. The UFU submit that overtime should be payable to shift workers not working a 10/14 roster on the
15. same basis as those working a 10/14 roster. Specifically, overtime should be paid where a fire fighter works outside their rostered shifts or works more than 4 shifts in any week."

**4. Clause 22.3 10/14 roster employees and other public sector employees**

The Full Bench has asked the parties to consider whether a provision should be inserted in clause 22 to clarify the rate of pay for an employee on annual leave.

We repeat and rely on our client's submission filed and dated 18 November 2015 at paragraphs 19-20:

- "19. This clarification is assumed to be the note in clause 22.1 that states: Where an employee is receiving over award payments such that the employee's base rate of pay is higher than the rate specified under this award, the employee is entitled to receive the higher rate while on a period of paid annual leave (see ss.16 and 90 of the Act).
20. The UFU consider that whilst not necessary, the clarification is desirable."

**5. Schedule D—Definitions**

The Full Bench has asked the parties to consider whether "public sector employer" and "private sector employer" should be defined.

We repeat and rely on our client's submission filed and dated 18 November 2015 at paragraph 22:

- "22. The UFU submit that private and public sector currently have a well understood meaning within the fire fighting industry and further definition is not necessary."

Yours faithfully,



Tonia Sakkas  
Principal  
DAVIES LAWYERS