

**Submissions of the "Automotive, Food, Metals, Engineering,  
Printing and Kindred Industries Union" known as the Australian  
Manufacturing Workers' Union (AMWU)**

**AM2018/203**

**COVER SHEET**

**Name:** Abha Devasia

**Organisation:** AMWU

**Street Address 1:** National Research Centre

**Street Address 2:** Level 3, 133 Parramatta Road

**Suburb/City:** Granville NSW

**Postcode:** 2142

**Contact details**

**Telephone:** (02) 8868 1500

**Email:** Abha.devasia@amwu.org.au



National Research Centre  
Level 3, 133 Parramatta Road  
Granville NSW 2151

*Fair Work Act 2009*

FAIR WORK COMMISSION

**AM2014/203**

**Submissions of the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)**

## Background

1. On 23 November 2018 the Fair Work Commission (Commission) handed down a decision in the 4 yearly review of modern awards (November decision).<sup>1</sup> In the November decision the Commission invited parties to comment to submissions filed by the Australian Industry Group ( Ai Group) in relation to items 1-2 – payment of wages and overtime, penalties and public holidays filed on 12 October 2018<sup>2</sup>.
2. These submissions are filed in response to the opportunity provided by the Commission to respond to the Ai Group’s submissions and will address:
  - a) Item 1-2 Payment of wages and overtime, penalties and public holidays
  - b) Item 3- definition of “ordinary hourly rate”
  - c) Insertion of casual ordinary hourly rate

### Item 1-2 Payment of wages and overtime, penalties and the ordinary hourly rate

3. The November decision follows on from a decision of the Commission handed down on 26 September 2018<sup>3</sup>(September decision). The AMWU agrees with the conclusion of the Commission at paragraph [98] of the September decision that the application of a percentage to calculate the overtime rates for shiftworkers would reduce an employee’s entitlement under the award.
4. The AMWU has previously submitted to sought to preserve the current wording of the award to “time and half” and “double time” in relation to the overtime provisions of the award.
5. In the September decision the Commission referred to the definition of the ordinary hourly rate and outlined the available the options to insert a definition of the “ordinary hourly rate” into the exposure draft. The Commission said:

*[90] The definition from the July 2015 decision of ordinary hourly rate for awards that have all purpose allowances that apply to some employees is as follows:*

***ordinary hourly rate** means the hourly rate for the employee’s classification specified in clause X, plus any allowances specified as being included in the employee’s ordinary hourly rate or payable for all purposes*

*[91] There are a number of options to address this issue. There are a number of problems with retaining the exposure draft in its current form. Firstly, the exposure draft now contains a number of provisions expressed as a percentage of the ordinary hourly rate and it would be unclear how the definition for hourly rates interacts with this definition. Secondly, the ‘hourly rates’ definition does not account for the fact that the award now contains hourly rates of pay as it provides how to calculate the hourly amount from the weekly amount. This is unnecessarily complex as the award now contains minimum hourly rates that have been calculated based on the 38-hour week.*

---

<sup>1</sup> [\[2018\] FWCFB 7210](#)

<sup>2</sup> [Ai Group Submissions 12 October 2018](#)

<sup>3</sup> [\[2018\] FWCFB 5986](#)

*[92] One option may be to maintain the hourly rates definition, in some form, and include the standard 'ordinary hourly rates' definition. As the exposure draft currently refers to the 'hourly rate' in a number of places this would mean that those rates would also have a definition. However the two definitions overlap and this would create an ambiguity in the document.*

*[93] A further option would be to include the standard definition of 'ordinary hourly rate' as set out in the July 2015 decision and remove the definition of 'hourly rate'. Our preliminary view is that it would be unnecessary to modify that definition to include the part of the 'hourly rate' definition that deals with the shift penalty as the award has preserved that distinction by maintaining the language of 'double time' and 'time and a half'. All instances of the phrase 'hourly rate' would be changed to 'ordinary hourly rate'. Our provisional view is that this option would clarify the operation of this award and we propose to insert the following definition:*

*ordinary hourly rate means the hourly rate for the employee's classification specified in clause 8.2, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes."*

6. The AMWU respectfully does not agree with the option of the Commission at paragraph [91] of the Decision and the preferred view of the Ai Group that the definition of hourly rate as it appears in the exposure draft should be replaced by the standard definition of "ordinary hourly rate".

7. The term hourly rate is defined at clause 3.1 as follows:

*"hourly rate means the weekly wage prescribed by this award for the work performed divided by the number of hours which constitute the employee's ordinary working week. In the event of an employee being employed on shiftwork the penalty payable for work at such hours will be part of the weekly wage of that employee."*

8. The term "hourly rate" appears in the exposure draft in the following clauses:

Exposure Draft	Current award
<p>Clause 6.4 (i)</p> <p>A casual employee working ordinary time must be paid the <b>hourly rate</b> prescribed in clause 8- Wage rates and classification structure for the work being performed plus a casual loading of 25%.</p> <p>(ii) the loading constitutes part of the casual employee's all purpose rate.</p>	<p>Clause 12.4</p> <p>A casual employee is one engaged and paid as such. A casual employee working ordinary time must be paid the <b>hourly rate</b> prescribed in clause <b>Error! Reference source not found.—Error! Reference source not found.</b> for the work being performed plus a casual loading of 25%. The loading constitutes part of the casual employee's all-purpose rate.</p>
<p>Clause 22.3</p> <p>Where an employee is required to work during their usual meal break they will be paid 150% of the <b>hourly rate</b> for the time worked and they will be allowed their usual meal break as soon as it can be arranged, but not later than five hours after</p>	<p>Clause 32.3</p> <p>Where an employee is required to work during their usual meal period they will be paid time and a half extra on the <b>hourly rate</b> of their weekly wage for the time so worked and they will be allowed</p>

commencing work each day.	their usual meal period as soon as it can be arranged, but not later than five hours after commencing work each day.
<p>Clause 26.2</p> <p>For all time an employee is required to stand-by for work they will be paid as follows:</p> <p>a) Weekly employees at the rate of the employee’s minimum <b>hourly rate</b> as prescribed by this award; or</p> <p>b) Casual employee, at the <b>hourly rate</b> prescribed in 6.4 (b) for day work</p>	<p>Clause 35.2</p> <p>For all time an employee is required to stand-by for work they will be paid as follows:</p> <p>a) weekly employees at the rate of the full-time employee’s hourly day work rate as prescribed by this award; or</p> <p>b) casual employee, at the <b>hourly rate</b> prescribed in clause 0 for day work.</p>

9. The term “hourly rate” is utilised in the award to indicate the rate payable to employees based on the employee’s classification prescribed in the award, and in some instances, including any shift allowance. Although there is some overlap between the definition of “hourly rate” and “ordinary hourly rate” as proposed by the Commission and the Ai Group, it is the AMWU’s view that the distinction between the hourly rate and ordinary hourly rate be maintained within the definitions of the exposure draft. The distinction is necessary to delineate between the use of the terms hourly rate as they appear in the exposure draft to indicate the minimum rate and ordinary hourly rate.
10. The amendment proposed by the Ai Group at paragraph [18] of their October submission has been advanced as the preferred definition as it would not inadvertently broaden the entitlement at clause 8 of the award, specifically the adult minimum rate, to other categories of employees specified in clauses 9,10,11,12 or 13.
11. The AMWU submits that the plain reading of the rates of pay at clauses 9,10,11,12 or 13 clearly demarcate the minimum rates of pay for the categories of pay. The entitlement for each category is clear. Including clause 8 into the definition clause of “ordinary hourly rate” makes clear that the minimum hourly rate is correctly referenced in the award.
12. The proposed definition of the Commission at [93] of the September decision should be inserted into the exposure draft with the following amendments (as underlined):

*Ordinary hourly rate means the hourly rate for the employee’s classification specified in clause 8.2 plus any allowances specified as being included in the employee’s ordinary rate or payable for all purposes. Where the employee is employed on shift work the penalty payable for the work at such hours will be part of the ordinary hourly rate*
13. The amendments proposed by the AMWU specifies the inclusion of employees shift allowances as part of the employee’s ordinary hourly rate. The definition is also consistent with the

Commission's decisions in award review proceedings. It will clarify any ambiguity as to what the appropriate rate of pay is in the "impugned clauses" as identified by the Ai Group.

14. The Ai Group also proposes to delete clause 21.3( c ). The clause should be retained in the exposure draft and the award as it makes explicit that the shift allowances form part of the ordinary hourly rate for the purposes of calculating overtime, for morning, afternoon and night shift and permanent night shift workers.

#### Casual ordinary rate

15. The AMWU acknowledges that the Commission has not called for further submissions with respect to casual employment provisions in the Award. The AMWU respectfully seeks leave to make a brief submission in relation to this issue and the drafting of definitions in the exposure draft.
16. The current drafting of the exposure draft and the award does not identify with enough precision that the casual loading is to be calculated on the ordinary hourly rate and not the minimum rate. It merely states that casual employees are entitled to be paid the hourly rate and a casual loading of 25%.
17. The AMWU respectfully advances a drafting proposal for insertion as a definition into the exposure draft:  
  
*"casual ordinary hourly rate means the hourly rate for a casual employee for the employee's classification specified in clause 8- wage rate and classification structure, inclusive of the casual loading. Where an employee is entitled to any allowances specified as being included in the employee's ordinary rate or payable for all purposes, this will form part of the of that employee's casual ordinary hourly rate."*
18. This drafting is consistent with the principle established in the decision of the Commission in [2015] FWCFB 6656 which concerns with way casual loading is calculated and is also consistent with the approach of the award as to how the casual loading operates.
19. The AMWU notes that the exposure drafts of most other modern awards that contain all purpose allowances have adopted similar drafting as proposed above. The adoption of the definition would align the award to be consistent with exposure drafts of other awards and make it simpler and easier to understand.

END