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*Fair Work Act 2009*  
FAIR WORK COMMISSION  
s. 156 – 4 yearly review of modern awards – award stage

AM2019/17

**AWU SUBMISSIONS ON TRANCHE 3 EXPOSURE DRAFTS**

**BACKGROUND**

1. On 29 January 2020, a Full Bench constituted to finalise exposure drafts arising from the 4-yearly review of modern awards issued a procedural Decision.<sup>1</sup>
2. Attachment A of the Decision identified awards falling within Tranche 3 of the finalisation process. The Decision includes directions for the filing of submissions concerning Tranche 3 exposure drafts.
3. The Australian Workers' Union's ("**AWU**") submissions concerning relevant Tranche 3 exposure drafts are below.

***Food, Beverage and Tobacco Manufacturing Award***

4. Clause 10.2: This should read: "A casual employee ~~working ordinary time~~ must be paid: ..." There is no longer any dispute that the casual loading is payable on a compounding basis when overtime is worked.<sup>2</sup>
5. Clause 25.11: It appears the reference to clause 25.5 is incorrect.
6. Schedule B.2: A casual overtime rates table can be inserted in accordance with the agreed position referred to above concerning clause 10.2.

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<sup>1</sup> [2020] FWCFB 421.

<sup>2</sup> See [1.2] of this ABI correspondence:

<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201751-corr-abinswbc-101019.pdf> and [6] of this FWC Statement: <https://www.fwc.gov.au/documents/decisionssigned/html/2019fwc8318.htm> at [6].

### ***Funeral Industry Award***

7. The headings for Part 3 – Hours of Work and Part 4 – Wages and Allowances do not appear in the body of the Exposure Draft.

### ***Horse and Greyhound Training Award***

8. Clause 10.5(a): This should read “For each ordinary hour worked, a casual employee must be paid: ...” There is no longer any dispute that the casual loading is payable on a compounding basis when overtime is worked.<sup>3</sup>
9. Clause 18.3: The reference at the end of the clause should be to clause 18.2, not 18.2(a). The current drafting is contrary to the NES because it does not include the annual leave loading prescribed in clause 18.2(b).
10. Schedule A.2: The casual overtime rates table and public holiday rates can be re-inserted in accordance with the agreed position referred to above concerning clause 10.5(a).

### ***Horticulture Award***

11. Clause 10.2 and 10.3: The reference to “clause 0” in clause 10.2 should be “clause 15” and clause 10.3 currently has no content. It appears the existing clause 10.4 and 10.5 should be amended to clause 10.3 and 10.4 respectively.
12. Clause 13.2: For consistency within this award and with other exposure drafts, the references in clause 13.2(b) and (d) to the “minimum hourly wage” should be amended to “ordinary hourly rate”.
13. Clause 19.4: There appears to be an unusually large formatting gap between clause 19.4(e) and 19.4(f).
14. Clause 26.4: For consistency within this award and with other exposure drafts, the reference to the “minimum hourly wage” should be amended to “ordinary hourly rate”.
15. Schedule B.3: Given there are widespread compliance issues in this industry, a casual overtime rate tables should be inserted. There is only one rate – 175% as per clause 20.4.

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<sup>3</sup> See [1.2] of this ABI correspondence:

<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201751-corr-abinswbc-101019.pdf> and [6] of this FWC Statement: <https://www.fwc.gov.au/documents/decisionssigned/html/2019fwc8318.htm> at [6].

### ***Pest Control Industry Award***

1. Clause 4.5: The insertion of the word 'that' in this clause immediately follows the word 'the'; one of these words should be deleted.

### ***Racing Clubs Events Award***

16. Schedule A.2: It has been agreed that casual employees are paid their 25% casual loading on a cumulative basis when overtime is worked and hence a casual overtime rates table can be inserted.<sup>4</sup>

### ***Sugar Industry Award***

1. Clause 31.3(b)(iii): The cross references in this clause should be to clauses 31.3(b)(i) and 31.3(b)(ii).

### ***Wine Industry Award***

17. Clause 24.4: It is unclear why the leave loading has been referred to as a "shift penalty". Clause 31.4 of the current award refers to a "loading".
18. Schedule B.2.3: There is no dispute<sup>5</sup> that the 25% casual loading is only paid when overtime is worked on a Sunday or public holiday as per clause 22.1(d). As a result, the rates table that has been deleted can be re-inserted.

**END**

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<sup>4</sup> See [1.2] of this ABI correspondence:

<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201751-corr-abinswbc-101019.pdf> and [6] of this FWC Statement: <https://www.fwc.gov.au/documents/decisionssigned/html/2019fwc8318.htm> at [6].

<sup>5</sup> See [1.2] of this ABI correspondence:

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