



DRAFT REPORT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards

(AM2014/268)

FOOD, BEVERAGE AND TOBACCO MANUFACTURING AWARD 2010

[MA000073]

COMMISSIONER LEE

MELBOURNE, 23 MAY 2017

4 yearly review of modern awards – Food, Beverage and Tobacco Manufacturing Award 2010.

[1] On 12 April 2017 a conference was held to discuss the Summary of Submissions – Technical and Drafting (the summary) in relation to the review of the *Food, Beverage and Tobacco Manufacturing Award 2010*. The transcript of the conference proceedings has been made available to parties.

[2] The following items in the summary document were discussed at the conference. The tracked changes reflect the comments submitted by parties in relation to the accuracy of the draft report published 2 May 2017:

- Item 1: agreed, no further action required.
- Item 2: agreed, this issue will be determined by the Award Stage-Group 3 Full Bench.
- Item 3: agreed, parties to await the decision in matter AM2014/75.
- Item 4: agreed, ‘ordinary hourly rate’ means the minimum hourly rate for an employee classification prescribed by this award, plus any all purpose allowance to which an employee is entitled. Agreed to insert words ‘employee’s classification prescribed by the award’ before the word ‘plus’ in the first line at B.1.1 in Schedule B. ~~and include the same definition in clause 2.~~
- Item 5: AMWU no longer press proposal, issue resolved.
- Item 6: AMWU no longer press proposal, issue resolved.
- Item 7: AMWU no longer press proposal, issue resolved.
- Item 8: agreed, at clause 7.2(a) the reference to clause 22.9 should be 22.9(d) and reference to clause 22.7 should be moved to its proper numerical place.
- Item 9: AMWU and AWU continue to object to AIG proposal to delete reference to clause 24.10 and 24.13 (refer to report back submissions dated 21 April 2017). Commissioner noted preliminary view is AIG position is preferred. [See AIG response to AMWU and AWU submissions dated 7 May 2017 and AWU response to AIG submissions dated 9 May 2017.](#)
- Item 10: same issue and outcome as Item 9.

- Items 11-12: agreed, as per summary document.
- Item 13: ~~does not appear to be any support for UV proposal. UV were to advise by 21 April 2017 if they still press the claim, the Commission has not received any correspondence from UV regarding this issue to date. UV proposal withdrawn (see correspondence dated 9 May 2017).~~
- Item 14: same issue and outcome as Item 13.
- Items 15-17: agreed, as per summary document.
- Item 18: Commissioner expressed preliminary view that words ‘in this award’ are not necessary. AIG do not oppose the retention of the words as sought by the AMWU. Commission will consider consistency with other modern award clauses.
- Item 19: AWU no longer press proposal.
- Item 20: AWU no longer press proposal.
- Item 21: AWU no longer press proposal.
- Item 22: agreed, as per summary document.
- Item 23: agreed, as per summary document.
- Item 24: AWU no longer press proposal.
- Item 25: Commissioner expressed preliminary view that AIG proposal should be accepted. AMWU and AWU do not oppose amendment sought (refer to report back submissions dated 21 April 2017).
- Item 26: agreed, await outcome of matter AM2014/197.
- Item 27: no resolution, parties further considering positions and were to make further submissions by 21 April 2017. AMWU press submission (refer to report back submissions dated 21 April 2017). ~~The Commission has not received correspondence from any other parties regarding this issue to date. AIG does not oppose the insertion of clause 15.10 of the Manufacturing Award or the insertion of clause 14.2 of the Award, as proposed by the AMWU.~~
- Item 28: AIG no longer press proposal.
- Item 29: agreed, as per summary document.
- Item 30-31: agreed.
- Item 32: all agree with AMWU proposal subject to checking that the words changed do not have unintended consequences when considered next to other award clauses.
- Item 33: AIG press change and AMWU and AWU say it is not necessary. Commission expressed view that change is warranted to the extent that it is consistent with changes made in other awards. AMWU and AWU confirmed they do not support AIG proposal (see report back submissions dated 21 April 2017). AIG note the unions’ opposition to their proposal and continue to rely upon paragraphs 166 -168 of their submission dated 18 January 2017 in this regard (refer to AIG response to AMWU and AWU submissions dated 7 May 2017).
- Item 34: agreed.
- Item 35: employer parties do not consider changes necessary. AMWU and AWU press submissions (see report back submissions dated 21 April 2017 and relevant annexure to AMWU submissions with proposed formatting). Commission will also consider the consistency of the formatting issue. AIG remain of the view that the changes proposed by the AMWU are unnecessary and would be inconsistent with the approach taken by the Commission in other exposure drafts (see AIG response to AMWU submissions dated 7 May 2017).
- Item 36: agreed.
- Item 37: agreed, UV proposal in submissions in reply at para 9 with the addition of the word ‘such’ before ‘clothing’ in the second last line.
- Item 38: all agreed with Business SA proposal to change the dot points to letters.
- Item 39: agreed.
- Item 40: Issue 1: all agreed that AFEI proposal be accepted as it is a typographical change. Issue 2: it is agreed that the wording in clause 22.25(b) of the ED be deleted

and replaced with the wording in clause 33.1(d) of the existing award. However, the additional words 'of the ordinary hourly rate plus ~~any all purpose allowance~~' will be inserted at the end of the words in the existing clause 33.1(d).

- Item 41: resolved on the basis of the agreed change at Item 40.
- Item 42: agreed.
- Item 43: agreed, alter the letters so that the preamble is not marked by (a) and other clauses are renumbered as a consequence. Also agreed in principle to replace wording in clause 22.11(a) in the ED with wording in current award in the preamble at clause 33.4 (note that the words 'of the ordinary hourly rate' are to be inserted after each percentage (100%, 200%, 200%) in the preamble). ~~AIG were to advise any concerns by 21 April 2017, the Commission has not received any correspondence from AIG regarding this issue to date.~~
- Item 44: agreed to AMWU proposal.
- Item 45: AIG propose to alter the ED so that clause 23.1(e) and clause 23.3(d) of the ED are deleted and wording from clause 31.3(d) of the existing award is inserted at clause 23.3(d) of the ED. AMWU and AWU do not support change (see report back submissions dated 21 April 2017). See AIG response to AMWU and AWU submissions dated 7 May 2017.
- Item 46: agreed.
- Item 47: issue common to many awards – there is not a common view among parties as to the answer to the question raised by the FWO. Full Bench to consider if any change necessary – no further action required from the parties.
- Item 48: agreed.
- Item 49: agreed.
- Item 50: agreed, consistent with the agreed changes at Item 4.
- Item 51: agreed, the table 'minimum hourly rate' in B.1.5 should be deleted as all shiftworkers will be paid some penalty so it is superfluous.
- Item 52: agreed, in clause 2 definition of 'casual ordinary hourly rate' delete 'specified in clause 14.1' and insert 'prescribed by this award'. In clause B.2.1 delete existing first sentence and replace with the amended first sentence of the definition of 'casual ordinary hourly rate' in clause 2.
- Item 53: agreed to AIG proposal.

[3] Any comments on the accuracy of the marked up draft record are to be filed with the Fair Work Commission by no later than **5:00pm on Tuesday 30 May 2017.**

COMMISSIONER

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