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AM2019/17 and Ors Tranche 2 Exposure Drafts: Submission in Reply

Introduction

1. The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (**AMWU**) makes the following submissions in accordance with the directions made by the Full Bench on 14 October 2019.¹

Background

2. On 2 September 2019 a Decision was issued, advising that a new Full Bench had been constituted to oversee the finalisation of the exposure drafts and consequent variation of each modern award.² The Full Bench further advised that the Exposure Drafts would be finalised in three tranches.
3. On 14 October 2019 a Decision was issued inviting submissions on the re-published exposure drafts in ‘tranche 2’.³
4. The AMWU made submissions in relation to the tranche 2 exposure drafts on 27 November 2019, as did several other industrial parties.
5. These submissions are made in reply to submissions made by various parties on 27 November 2019 in relation to the following awards:
 - a. Airline Operations Ground Staff Award 2010
 - b. Manufacturing and Associated Industries and Occupations Award 2010

¹ *4-yearly Review of Modern Awards* [2019] FWCFB 6861 [8].

² *4-yearly Review of Modern Awards* [2019] FWCFB 6077 [1].

³ *4-yearly Review of Modern Awards* [2019] FWCFB 6861 [8].

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AM2014/254 Airline Operations – Ground Staff Award 2010

Submissions in Reply to AiG

Clause 7.4(a): Facilitation by majority agreement

1. The AiG submit:
“The reference to clause 19 should be replaced with a reference to clause 19.2. Clause 19 contains various subclauses. Only clause 19.2 is a facilitative clause.”⁴
2. The AMWU agrees with this submission.

Clause 10.3(a): Part-time shiftworkers

3. The AiG submit:
*The word “on” should be inserted before “guaranteed”.*⁵
4. The AMWU submits that it should be inserted before the word ‘the’ rather than the word ‘guaranteed’ such that the sub-clause reads:
At the time of engagement or appointment of an employee as a shiftworker, the employer and the part-time employee will agree in writing on the guaranteed minimum number of ordinary hours to be worked per week.

Clause 17.7(b): Shift penalty rates – weekends and public holidays

5. The AiG submit:
*“The word “premiums” should be replaced with “rates and allowances” in order to reflect the terminology adopted in clauses 17.3 – 17.6. It is potentially arguable that the shift rates prescribed by clauses 17.3 – 17.5 are not, as such, premiums; only the portion in addition to the minimum hourly rate constitutes the ‘premium’.”*⁶
6. The AMWU does not agree that the proposed change is necessary. The current equivalent clause refers to ‘shift premiums.’⁷

⁴ Submission of the Australian Industry Group of 27 November 2019 [7].

⁵ Ibid [8].

⁶ Ibid [9].

⁷ *Airline Operations Ground Staff Award 2010* Clause 30.7(b).

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Clause 24.1(c): Payment for working overtime

7. The AiG submit:

‘Clause 24.1(c) appears to have been included in error. It reflects the ‘time off in lieu of overtime’ provision that was contained in the award prior to the insertion of the new clause 32.2 of the award (clause 24.6 of the exposure draft) in lieu of it. Accordingly, clause 24.1(c) should be deleted.’⁸

8. The AMWU agrees that this submission appears to be correct.

Clause 35.1(c): Notice of termination by an employee

9. The AiG submits “A space should be added between “(b)” and “continuous”.”⁹

10. The AMWU agrees with this submission.

Clause C.1.1: Wage-related allowances – disability allowance

11. The AiG submit:

“The clause numbers referenced in the schedules should be amended as follows to improve clarity:

(a) Disability allowance—excessive fumes, noise and dust etc: 20.3(b)(i)(A)

(b) Disability allowance—noise and dust to a limited degree: 20.3(b)(i)(B)”¹⁰

12. The AMWU agrees with this submission.

Submissions in reply to Qantas

Clause 18.7 Higher Duties

13. Qantas submit:

“We query whether this is the appropriate placement of the clause.”¹¹

14. The AMWU notes that the placement of the higher duties clause in the Ground Staff Award is the same as in other exposure drafts, notably the exposure draft for the Manufacturing and Associated Industries and Occupations Award.¹²

⁸ Submission of the Australian Industry Group of 27 November 2019 [10].

⁹ Ibid [11].

¹⁰ Submissions of the Ai Group dated 27 November 2019 [17].

¹¹ Submissions by companies in the ‘Qantas Group’ of 26 November 2019 [4].

¹² *Exposure Draft – Manufacturing and Associated Industries and Occupations Award 20XX* republished 14 October 2019 clause 20.2.

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Schedule B.5.3 Full-time and part-time storepersons and logistics shiftworkers

15. Qantas submit:

“The rates in Schedule B.5.3 appear to be incorrect. By our calculations, the rates for 150%, 200% and 250% of the ordinary hourly rate (which is based on the minimum hourly rate) should reflect those in B.5.1.”¹³

16. The AiG make the same submission at [15].

17. The AMWU agrees that the rates in B.5.3 appear to be incorrect and require correction.

Schedule B Summary of hourly rates of pay

18. Qantas submit:

“We agree with the TWU’s submissions (dated 21 November 2019) that Schedules B.2.4, B.3.4, B.4.4 and B.4.5 require amendment to reflect the variation to clause 24.1 of the Exposure Draft (see [2019] FWCFB 5619 at [109]-[112]), which now provides that for shiftworkers working on Sunday, the rate for working overtime is 200% of the ordinary hourly rate.”¹⁴

19. The AiG make the same submission at paragraphs [12]-[14].

20. The AMWU also agrees with this submission and notes it made the same submission in the first round of submissions.¹⁵

AM2014/75 Manufacturing and Associated Industries and Occupations Award 2010

Submissions in reply to AiG

Clause 2 Definitions

21. The AiG submit:

“The words ‘leading boiler attendant or fireperson—first class’, ‘leading boiler attendant or fireperson—second class’ and ‘ship repairs’ should be in bold.”¹⁶

22. The AMWU agrees with this submission.

23. The AiG submit:

¹³ Submissions on behalf of the companies in the ‘Qantas Group’ of 26 November 2019 [7].

¹⁴ Ibid [6].

¹⁵ Submission of the AMWU dated 27 November 2019 [6]-[9].

¹⁶ Submissions of the Ai Group dated 27 November 2019 [57].

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*"The number "(c)" should be deleted before the definition of 'radio industry.'"*¹⁷

24. The AMWU agrees with this submission but for completeness notes that it understands the AiG is submitting that the 'radio industry' definition should be a new paragraph (and not a subparagraph of the 'production planners' definition which it currently appears to be).

Clause 4: Coverage

25. The AiG submit:

*'The date in both dot points in clause 4.8(a)(xi) and in clause 4.8(a)(xiii) should be the date when the award is varied to reflect the terms of the exposure draft.'*¹⁸

26. AMWU agrees with this submission and notes it made the same submission in its 27 November submissions.¹⁹

Clause 12.8(c): Apprentices – Nominal period

27. The AiG submit that:

"two commas should be inserted in clause 12.8(c) as follows:

*the requirements of the relevant State/Territory apprenticeship authority and any requirements of the relevant industry committee, which is currently the Manufacturing and Engineering Industry Reference Committee, with respect to ..."*²⁰

28. The AMWU agrees with this submission.

Clause 31.3: Unrelieved shiftwork on rostered day off

29. The AiG submit:

"The equivalent provision in the existing award (clause 40.2(e)) applies only to shiftworkers and as understand it the intent of the new provision is that it apply only to shiftworkers. To avoid any ambiguity, the following minor amendment should be made:

If ~~an employee~~ a shiftworker is required to work on their rostered day off because of the absence of a relieving employee, the unrelieved shiftworker must be paid 200% of the ordinary hourly

¹⁷ Ibid [58].

¹⁸ Ibid [59].

¹⁹ Submission of the AMWU dated 27 November 2019 [15].

²⁰ Submissions of the Ai Group dated 27 November 2019 [60].

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rate for all hours worked on their rostered day off.”²¹

30. The AMWU does not agree that this proposal is necessary.

Clause C.1.1: Table of Rates

31. The AiG submit:

“The following amendment should be made to the heading of the second column of the table:

% of ordinary hourly rate/~~minimum casual ordinary~~ minimum hourly rate

The expression ‘minimum casual ordinary hourly rate’ is likely to confuse readers of the award, given its similarity to the expression ‘casual ordinary hourly rate’ which is a defined term in the award and has a different meaning. The expression ‘casual minimum hourly rate’ is a more appropriate term. This term is defined in clause C.3.1.”²²

32. The AMWU agrees that the term ‘minimum casual ordinary hourly rate’ is liable to confuse users of the award. However rather than changing the column to ‘casual minimum hourly rate’ the AMWU proposes it be changed to ‘casual ordinary hourly rate’ because the relevant penalties in the table at C.1.1 are calculated on the ordinary hourly rate (which for a casual is the casual ordinary hourly rate).

33. The AiG submit:

*“The following typographical error appears twice in the table, in the rows relating to the penalties for work on shifts that are not rostered shifts. It should be amended as proposed: ~~three~~3 hours”.*²³

34. The AMWU agrees with this submission.

35. The AiG submit that a number of clause references should be added to the table at C.1.1.²⁴

36. The AMWU agrees with this submission.

Clause C.1.2: Other circumstances attracting a penalty payment – casual minimum hourly rate

37. The AiG submit:

“The following amendment should be made to the heading of the second column of the table for the same reason as outlined above for clause C.1.1:
***% of ordinary hourly rate/~~minimum casual ordinary~~ minimum hourly rate”*²⁵**

²¹ Ibid [61].

²² Ibid [62]-[63].

²³ Ibid [64].

²⁴ Ibid [65].

²⁵ Ibid [66].

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38. For the same reasons as expressed in [32] the AMWU submits that rather than being changed to 'casual minimum hourly rate' it should be changed to 'casual ordinary hourly rate'.

Clause C.2 Full-time and part-time employee' hourly rates

39. The AiG submit that:

*"An apostrophe should be placed after 'employees' in the title of clause C.2."*²⁶

40. The AMWU agrees with this submission.

41. The AiG submit:

"The following amendment should be made to footnote 1 because these rates are only relevant to vehicle manufacturing employees covered by clause 4.8(a)(ix), not all vehicle manufacturing employees covered by the Award:

*Rates in bold are for Vehicle Manufacturing employees covered by clause 4.8(a)(ix) only."*²⁷

This submission is repeated with respect to clause C.3.2(a).

42. The AMWU notes that the cross reference proposed by the AiG appears to be incorrect. The AiG refer to clause 4.8(a)(ix) however that clause does not deal with vehicle manufacturing at all, rather it is an ancillary part of the traditional manufacturing award coverage. It is clauses 4.8(a)(xi) and (xii) that deal with vehicle manufacturing.

43. This appears to be a broader issue with the exposure drafts, and many/all of the references to 4.8(a)(ix) in the exposure draft may need to be re-considered.

C.3.2(b) Casual rates

44. The AiG submit:

"The heading needs to be clarified for this table to avoid confusion because only a very small cohort of employees are entitled to a 17.5% loading. The heading should be:

*'Casual rates – based on a 17.5% casual loading for certain vehicle manufacturing employees in the technical field covered by clause 4.8(a)(ix) - ~~in accordance with~~ See clause 11.2(d) and clause 46.1.'*²⁸

²⁶ Ibid [67].

²⁷ Ibid [68].

²⁸ [70].

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45. The AMWU is not opposed to clarifying via a footnote the classifications that are entitled to the 17.5% loading. However, the AMWU repeats its submission made at [42]-[43] with respect to the proposed cross reference.

46. The AiG submit:

*"In the second column in the table, the words '+17.5%' should be deleted to avoid confusion. The 17.5% casual loading is referred to in the heading row above and is incorporated within the definition of 'casual minimum hourly rate'."*²⁹

47. The AMWU is not opposed to this proposal.

Clause D.1.2: Wage related allowances

48. The AiG submit:

"The wording above the table should be amended as follows:

*'See clause 29 – Allowances and special rates for ~~full~~ details of wage-related allowances payable under this award. In addition, clause 52 deals with certain additional or alternative wage-rated allowances for vehicle manufacturing employees covered by clause 4.8(a)(ix) of the award.'"*³⁰

49. The AMWU is not opposed to this proposal but repeats its previous submission at [42]-[43] regarding 4.8(a)(ix) being the incorrect cross reference.

Clause D.1.3: Wage-related Allowances – Special Rates

50. The AiG submit:

The wording above the table should be amended as follows:

*'See clause 29 – Allowances and special rates for ~~full~~ details of wage-related allowances – special rates payable under this award. In addition, clause 52 deals with certain additional or alternative wage-rated allowances – special rates for vehicle manufacturing employees covered by clause 4.8(a)(ix) of the award.'"*³¹

51. The AMWU is not opposed to this proposal but repeats its previous submission at [42]-[43] regarding 4.8(a)(ix) being the incorrect cross reference.

52. The AiG submit:

*"The following words in the heading for column 4 should be deleted because column 5 deals with the period for payment: 'per hour unless otherwise stated'."*³²

53. The AMWU is not opposed to this proposal.

²⁹ Ibid [71].

³⁰ Ibid [72].

³¹ Ibid [73].

³² Ibid [74].

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54. The AiG submit that a number of wage related special rates are missing from the table at D.1.3.³³

55. The AMWU is supportive of the identified special allowances being added, but repeats its submission at [41]-[42] regarding the appropriate cross reference.

Clause D.2.1 Expense-related allowances

56. The AiG submit:

“The wording above the table should be amended as follows:

‘See clause 29 – Allowances and special rates for full details of wage-related allowances payable under this award. In addition, clause 52 deals with certain additional or alternative wage-rated allowances for vehicle manufacturing employees covered by clause 4.8(a)(ix) of the award.’³⁴”

57. The AMWU is not opposed to this proposal but repeats its previous submission at [42]-[43] regarding 4.8(a)(ix) being the incorrect cross reference.

58. The AiG submit:

*‘The words ‘per hour unless otherwise stated’ should be deleted in the heading for column 4 because column 5 deals with the period for payment’.*³⁵

59. The AMWU does not follow this submission. Those words ‘per hour unless otherwise stated’ do not appear in the table in D.2.1.

60. The AiG submit:

“The following amendments need to be made to the tool allowance in the table because the table currently states that apprentices are entitled to a \$15.29 per week tool allowance which is not correct:

Allowance	Clause	\$	Payable
<i>Tool allowance – tradespersons and apprentices^{1 2}</i>	29.1(c)	15.29	Per week

1. These allowances apply for all purposes of the award

2. See clause 29.1(c)(v) for the tool allowance for apprentices.”

³³ Ibid [75].

³⁴ Ibid [76].

³⁵ Ibid [77].

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61. It is not quite correct to say that apprentices are not entitled to a tool allowance of \$15.29. They are entitled to a percentage of the \$15.29 amount.³⁶
62. Therefore, the AMWU submits that the issue should instead be resolved by amending the table as follows:

Allowance	Clause	\$	Payable
<i>Tool allowance – tradespersons and apprentices¹</i>	<i>29.1(c)</i>	<i>15.29²</i>	<i>Per week</i>

- 1. These allowances apply for all purposes of the award*
- 2. Tool allowance for apprentices is calculated as a percentage of this amount. See clause 29.1(c)(v) for calculating the tool allowance for apprentices.*

63. The AiG submit that there are a number of expense related allowances missing from the table and propose that they be inserted.³⁷
64. The AMWU is supportive of the identified allowances being added to the table, but repeats its previous submission at [42]-[43] regarding the appropriate cross reference.

Submissions in reply to ABI

65. ABI submit:

“The phrasing ‘This award covers any employer which supplies labour on an on-hire basis in the manufacturing and associated industries and occupations industry (or industries)’ is unclear.

We suggest deletion of the words ‘and occupations industry (or industries)’ such that the amended clause would read ‘This award covers any employer which supplies labour on an on-hire basis in the manufacturing and associated industries’.”³⁸

66. The AMWU agrees with this submission.

67. ABI submit:

“The explanation of what the ‘100%’ casual rate in this table is unclear. Specifically, the text stating that the Casual rates are ‘based on’ 25% casual loading is not clear.

³⁶ *Manufacturing and Associated Industries and Occupations Award 2010* clause 32.1(c)(iv).

³⁷ Submissions of the Ai Group dated 27 November 2019 [79].

³⁸ Submissions of Australian Business Industrial and the NSW Business Chamber dated 27 November 2019 [42]-[43].

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We would suggest varying these words to provide that Casual rates are inclusive of 25% casual loading. This would decrease the likelihood that a reader of the award may interpret this table as requiring an additional 25% casual loading to be applied to the '100%' rate.”³⁹

68. The AMWU does not agree that this is not clear that the rates in the table in C.3.2(a) are inclusive of the casual loading. The table states that the rates constitute that they are the ‘casual minimum hourly rate’. Whilst that is not a defined term in the award, the tables also state that they are “based on 25% casual loading in accordance with clause 11.2(a)”.

END

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9 December 2019

³⁹ Ibid [44]-[45].

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