

IN THE FAIR WORK COMMISSION

Matter No: AM2014/263

Section 156 - Four Yearly Review of Modern Awards – *Children’s Services Award 2010*

SUBMISSION OF UNITED VOICE

1. This submission concerns item 9 of the technical and drafting issues in the exposure draft of the *Children’s Services Award 2010* (‘Children’s Services Award’).
2. Item 9 concerns a submission by the Australian Industry Group (‘AIG’) that the calculation of the casual loading should be based on the minimum hourly rate and not the ordinary hourly rate.¹
3. United Voice opposes AIG’s submission. We continue to rely on paragraphs 9 through 27 of our submissions of 24 March 2017. In that submission, we noted that AIG’s position was inconsistent with both the current text of the Children’s Services Award and the Drafting and Technical Issues Full Bench decisions of 13 July 2015 (‘*July 2015 Decision*’)² and 30 September 2015 (‘*September 2015 Decision*’).³
4. This is a matter that has been the subject of significant disputation in the Four yearly review of modern awards. AIG have agitated this issue in a number of modern awards. A Full Bench recently issued a decision respect in the *Manufacturing and Associated Industries and Occupations Award 2010* (‘Manufacturing Award’)⁴ which is relevant to the matter in dispute in the Children’s Services Award. The relevant sections are at paragraphs 29 to 39.
5. That matter concerned a dispute between the AMWU and the AIG over the redrafting of clause 6.4(b)(a) of the Manufacturing Award exposure draft, in particular whether the casual loading was calculated on the minimum hourly rate or the ordinary hourly rate. As in the Children’s Services Award, AIG submitted that the casual loading in the Manufacturing Award was calculated on the minimum rate of pay.⁵ Similarly, AIG submitted that calculating the casual loading on the ordinary hourly rate of pay would be a substantive change.⁶
6. The Full Bench rejected this submission. In doing so, they identified three key principles from the *September 2015 Decision* in their decision.

¹ Submission of AIG dated 30 June 2016, [241].

² *Four yearly review of modern awards* [2015] FWCFB 4658 [35]-[47].

³ *Four yearly review of modern awards* [2015] FWCFB 6656 [107]-[111].

⁴ *Four yearly review of modern awards – Award stage – Group 1* [2017] FWCFB 3177 (‘*Manufacturing Award Decision*’).

⁵ Submission of AIG dated 23 November 2015, [59].

⁶ Submission of AIG dated 23 November 2015, [60].

7. Firstly, that if the causal loading were calculated from the minimum hourly rate there would be reductions in the hourly rates of casual employees and that these reductions would not be in significant.⁷

8. Secondly:

*We consider it to be well understood that an allowance which is described as all purpose in nature is one that necessarily forms part of the ordinary time rate. That being the case, any departure from that approach proposed by the provisional decision must be justified by cogent reasons.*⁸

9. Thirdly:

*The general approach will remain as expressed in the exposure drafts, namely that the casual loading will be expressed as 25% of the ordinary hourly rate in the case of awards which contain any all purpose allowances, and will be expressed as 25% of the minimum hourly rate in awards which do not contain any such allowances.*⁹

10. The Full Bench then chose to vary the exposure draft to better reflect these principles.¹⁰ The Bench inserted a new clause 6.4(b):

(b) Casual loading

(i) For working ordinary time, a casual employee must be paid:

- the ordinary hourly rate for the work being performed; plus*
- a loading of 25% of the ordinary hourly rate.*

(ii) The casual loading constitutes part of the casual employee's all purpose rate.

(iii) The resulting rate is the casual ordinary hourly rate.

11. The Full Bench then made the following criticism of AIG:

[35] It seems to us that the submissions of Ai Group on the wording of clause 6.4(b) in the exposure draft issued following the October 2015 decision do no more than seek to re-agitate matters raised by it and considered in the July 2015 decision and ultimately resolved in the September 2015 decision. (Citations omitted)

⁷ *Manufacturing Award Decision*, quoting *September Decision*, [32].

⁸ *Manufacturing Award Decision* quoting *September Decision*, [33].

⁹ *Manufacturing Award Decision* quoting *September Decision*, [34].

¹⁰ *Manufacturing Award Decision*, [38].

12. In the review of the Children's Services Award, AIG is again seeking re-agitate matters raised and considered in the *July 2015 Decision*. It does so with little more than a paragraph of submissions. It has not made any relevant submission or led any evidence regarding any matter relevant to the particular to the Children's Services Award. It relies on a bare assertion without substance. AIG's submission should be rejected.

**United Voice
27 June 2017**