



National Research Centre
Level 3, 133 Parramatta Road
Granville NSW 2142
T: (02) 8868 1500
W: www.amwu.org.au

AM2019/17 and ors Tranche 1 Exposure Drafts and 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 varied directions made by the Full Bench on 20 September 2019 pursuant to a request for an extension by the AMWU.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
3. The Full Bench further advised that the Exposure Drafts would be finalised in three tranches.
4. Parties were directed to:
 - respond to submissions made in response to the March submissions; and
 - File submissions in relation to the published exposure drafts in ‘Tranche 1’.
5. Accordingly, the AMWU makes the following submissions.

Submissions in Relation to Tranche 1 Exposure Drafts

6. The AMWU has an interest in the following awards in tranche 1:
 - a. Electrical Power Industry Award;

¹ 4 Yearly review of modern awards -award stage [2019] FWCFB 6562 [8]-[9].

² 4 yearly review of modern awards – finalisation of exposure drafts – newly constituted Full Bench [2019] FWCFB 6077 [1].

- b. Mining Industry Award;
- c. Oil Refining and Manufacturing Award;
- d. Seafood Processing Award;
- e. Surveying Award; and
- f. Water Industry Award

AM2014/265 Electrical Power Industry Award

- 7. The AMWU has not identified any issues and has no comments to make in relation to the published exposure draft.

AM2014/79 Mining Industry Award 2010

- 8. The AMWU has not identified any issues and has no comments to make in relation to the published exposure draft.

AM2014/80 Oil Refining and Manufacturing Award 2010

- 9. The AMWU has identified a minor drafting issue in the table in clause C.2.1 of the Exposure Draft.

- 10. Clause C.2.1 of the Exposure Draft provides as follows:

“The following expense-related allowances will be payable to employees in accordance with clause 19.3:

<i>Allowance</i>	<i>Clause</i>	<i>\$</i>	<i>Payable</i>
<i>Meal allowance — overtime</i>	<i>19.3(a)</i>	<i>14.70</i>	<i>per meal</i>
<i>Vehicle allowance</i>	<i>19.3(c)</i>	<i>0.78</i>	<i>per km</i>
<i>Tool allowance</i>	<i>19.3(d)</i>	<i>15.29</i>	<i>per week</i>

- 11. Clause 19.3(a)(i) provides:

“An employee will be paid a meal allowance of \$14.70 on each occasion that the employee is entitled to a rest break during overtime work in accordance with clause 22—Overtime.”

- 12. The AMWU submits that the third column in relation to the meal allowance for overtime

should be changed from “*per meal*” to “*per rest break*”, to better reflect the frequency with which the allowance is payable in accordance with clause 19.3(a)(i).

AM2014/213 Seafood Processing Award 2010

13. The AMWU has not identified any issues and has no comments to make in relation to the published exposure draft.

AM2014/287 Surveying Award 2010

14. The AMWU has identified a minor issue in clause 11.2 which is the clause that deals with casual employment.

15. Clause 11.2 states:

“For each ordinary hour worked, a casual employee will be paid the minimum hourly rate for the work being performed. In addition, a casual employee will receive a 24% loading.”

16. The equivalent clause in the current *Surveying Award 2010* is 11.2(b) which provides:

“A casual employee will be paid per hour 1/38th of the weekly rate prescribed in this award for the work performed. In addition, a casual employee will receive a 25% loading.”

17. The AMWU is concerned that the change in the language between the award and the exposure draft may constitute a substantive change. Moreover, the change does not appear to have come about at the request of any of the parties or as part of any arbitrated process in the Group 4 review proceedings.

18. Consequently, the AMWU proposes the following amendment to the Exposure Draft. Changes are marked up using strike through and underline:

“For each ~~ordinary~~ hour worked, a casual employee will be paid the minimum hourly rate for the work being performed. In addition, a casual employee will receive a 24% loading.”

19. The AMWU acknowledges that the drafting of clause 11.2 has been the same as previous iterations of the Exposure Draft. Unfortunately, this issue has only been identified in this round, hence why it has been identified at this time and not earlier.

20. The AMWU further acknowledges that (as signposted on the Exposure Draft), the wording of clause 11.2 (and others) may be affected by the proceedings in *AM2017/51 Overtime for Casuals*. However, the AMWU submits that notwithstanding this, it is appropriate for the current wording in the exposure draft to reflect the existing drafting in the award pending any changes that may or may not occur virtue of decision and/or determination in *AM2017/51 Overtime for Casuals*.

AM2014/289 Water Industry Award

21. The AMWU has identified a minor drafting issue in clause 4.5 of the Exposure Draft.

22. In clause 4.5 the tracked changes indicate that it is intended that the words “*set out in clauses 4.1 and 4.2*” be deleted. This is in accordance with [2019] FWCFB 5409 at [118].

23. However, according to the tracked changes function, the numbers “4.2” appear to not be deleted from the sentence, which we assume is a typo. It is submitted that this should be corrected, and the numbers “4.2” be deleted to ensure that the sentence makes sense.

24. For the avoidance of doubt, the AMWU submits that clause 4.5 should read as follows:

“This award covers any employer which supplies labour on an on-hire basis in the water industry in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. Clause 4.5 operates subject to the exclusions from coverage in this award.”

Submissions in Reply to other Parties: Various Exposure Drafts

25. The AMWU makes the following submissions in response to the various submissions of other parties in relation to various awards that the AMWU has an interest.

AM2014/75 Manufacturing and Associated Industries and Occupations Award 2010

Submission in Reply to Submission by Australian Business Industrial and the NSW Business Chamber (ABI)

26. ABI Submit that:

“Note 2 at clause 31.7 should be amended to read “the Act” rather than “the Fair Work Act”, consistent with the other changes that have been made to the exposure draft.”

and

“The two Notes at clause 31.13 should be amended to read “the Act” rather than “the Fair Work Act”, consistent with the other changes that have been made to the exposure draft”³

27. The AMWU agrees with this submission.

AM2014/82 Poultry Processing Award 2010

Submission in Reply to Submission by Australian Business Industrial and the NSW Business Chamber (ABI)

28. ABI Submit that:

“The definition of ‘poultry processing industry’ in clause 3.2 is missing a full stop at the end of the sentence.”⁴

29. The AMWU notes that the ABI submission is correct.

30. ABI further submit that:

“Schedule G of the revised exposure draft contains a full definition of ‘poultry processing industry’. 29. This is inconsistent with [2017] FWCFB 3433 at [339] where it was determined that industry definitions in the definition schedules would simply refer readers to the relevant coverage clause, where the definition would be retained in full.”⁵

31. The AMWU notes that this submission also appears to be correct.

AM2014/92 Timber Industry Award

Submission in Reply to Submission by Australian Business Industrial and the NSW Business Chamber (ABI)

32. ABI Submit that:

“The numbering of clause 19 appears inconsistent with both the relevant determination (PR606396) and usual numbering applied to modern awards in general.

The two subclauses have been numbered 19(a) and 19(b) whereas 19.1 and 19.2 would appear to be more appropriate.”⁶

³ *Submission of Australian Business Industrial and the New South Wales Business Chamber Ltd in relation to the Group 1 Awards dated 13 March 2019 [16]-[17].*

⁴ *Ibid [27].*

⁵ *Ibid [28]-[29].*

⁶ *Ibid [52]-[53].*

33. The AMWU does not oppose this submission.

AM2014/216 Waste Management Award

Submission in Reply to Submission by Australian Business Industrial and the NSW Business Chamber (ABI)

34. ABI Submit that:

“The public holiday percentages have not been updated in Schedule A (specifically A.2.1) for consistency with clause 21.5(a).”⁷

35. The AMWU notes that this submission appears to be correct.

Waste Contractors and Recyclers Association of NSW (WCRA)

36. WCRA submit:

“Clause 10.1 of the Exposure Draft is prone to confuse employers with its treatment of the industry allowance provided for by clause 11.2(b) of the Exposure Draft. It is the only wage related clause in the Exposure Draft that does not incorporate the industry allowance into the provided figures.

2. WCRA submits that the Award should be re-drafted so that all information is consistent, either by amending clause 10.1 to include the industry allowance (this is WCRA’s preferred option) or by amending other wage-related clauses in the exposure draft to contain allowance-exclusive figures.

3. In the alternative, WCRA suggests that the wording of clause 10.1 should be amended for clarity to read: “adult employees are entitled to the minimum weekly wage prescribed for the classification in which they are employed as set out in the table below. The amounts in the table do not include the industry allowance referred to in clause 11.2(b), which must be added when calculating weekly wages.”

37. The AMWU does not agree with the submission that the table is confusing, because of the inclusion of the words:

⁷ Submission of Australian Business Industrial and the NSW Business Chamber Limited Submission in relation to Group 2 Awards dated 15 March 2019 [26].

“adult employees are entitled to the minimum weekly wage prescribed for the classification in which they are employed plus the industry allowance referred to in clause 11.2(b).”⁸

38. The inclusion of the words “plus the industry allowance” makes it clear that the industry allowance is required to be added.

Australian Road Transport Industrial Organization (ARTIO)

39. ARTIO submit:

“It does not appear as though the Waste Draft allows for 'ordinary hours' to be worked on a Saturday or Sunday. Given the increased opening hours of council waste facilities, including transfer stations, this creates an issue for both employers seeking work performed over week-ends and employees who only work, whether part-time or casual, on Saturdays or Sundays.”⁹

40. To the extent that this submission from ARTIO forms a proposal for a variation to the Exposure Draft to allow ordinary hours to be worked on Saturday or Sunday, it is strongly opposed by the AMWU.

41. Such a change would be a major substantive change to the Award and should not be entertained as part of the Exposure Draft process, particularly at this late stage of the 4-yearly review.

END

AMWU National Research Centre

30 September 2019

⁸ Submission of the Waste Contractors and Recyclers Association of NSW dated 14 March 2019.

⁹ Submission of the Australian Road Transport Industrial Organisation dated 8 March 2019.