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

AM2019/17

AWU REPLY SUBMISSIONS ON SECOND TRANCHE EXPOSURE DRAFTS

BACKGROUND

1. On 14 October 2019, a Full Bench constituted to finalise exposure drafts arising from the 4-yearly review of modern awards issued a procedural Decision¹.
2. Attachment A of the Decision identified awards falling within a ‘Second Tranche of Exposure Drafts to be Finalised’. The Decision includes directions for the filing of submissions concerning the Second Tranche exposure drafts.
3. On 27 November 2019, the Australian Industry Group (“**AIG**”), Australian Business Industrial (“**ABI**”), the New South Wales Business Chamber (“**NSWBC**”) and Qantas Group (“**Qantas**”) filed submissions concerning numerous Second Tranche exposure drafts.
4. The Australian Workers’ Union’s (“**AWU**”) submissions in response to those filed by AIG, ABI, NSWBC and Qantas appear below.

Airline Operations – Ground Staff Award

AIG submissions

5. Clause 7.4(a): The AWU agrees the reference should be to clause 19.2.
6. Clause 10.3(a): On the basis that the intention of the AIG submission is for the word ‘on’ to be inserted before the word ‘the’ and not the word ‘guaranteed’, the AWU has no objection.

¹ [2019] FWCFB 6861.

7. Clause 17.7(b): The AWU believes that this proposal is unnecessary. The current expression in the clause is clear.
8. Clause 24.1(c): The AWU agrees that clause 24.1(c) should be deleted.
9. Clause 35.1(c): The AWU agrees that a space should be added.
10. Schedules B.2.4, B.3.4, B.4.4: The AWU does not oppose the amendment as proposed.
11. Schedules B.5.3, B.5.4: The AWU agrees that a number of the rates in these tables are incorrect.
12. Schedule C.1.1: The AWU does not oppose the amendments as proposed.

QANTAS Submissions

13. Clause 4.2: The AWU understands the definition in the current award and the Exposure Draft to have the same effect.
14. Clause 18.7: The AWU finds the placement of this clause appropriate.
15. Clause 24.1(c): The AWU agrees that clause 24.1(c) should be deleted.
16. Schedules B.2.4, B.3.4, B.4.4: The AWU agrees that these schedules require updating.
17. Schedule B.5.3: The AWU agrees that a number of the rates in this table are incorrect.

Asphalt Industry Award

Additional AWU issue

18. Clause 11.4(a): The references to “minimum hourly rate” should be amended to “ordinary hourly rate” because this award contains all-purpose allowances.²

AIG submissions

19. Clause 7.2: The AWU agrees the reference should be to clause 16.1.
20. Clause 11.4(a)(i): The AWU agrees the reference should be to clause 15.

² As determined in [2019] FWCFB 6656 at [110].

21. Clause 13.6: The proposal from ABI and NSWBC identified below will resolve this issue.
22. Clause 14.2: The AWU agrees that the numerals 7.5 need to be inserted.
23. Clause 20.1(a): The AWU agrees the reference should be to clause 20.
24. Clause 20.2(b)(iv): The AWU agrees the reference should be to clause 20.2(b)(iv).
25. Clause 20.5(a): The AWU agrees the wording should be amended and proposes the following: "... will be paid at 200% of their ordinary hourly rate". For consistency, the words "of pay" can also be deleted in the relevant parts of clause 20.2(b).

ABI and NSWBC submissions

26. Clause 13.6: The AWU agrees with the proposed insertion of '7.5' and '8.5'.
27. Schedule B.2.1: The AWU agrees with the proposed insertion of '5.5'.

Concrete Products Award

AIG submissions

28. Clause 7.2: The AWU agrees the reference should be to clause 17.1.
29. Clause 11.3(b): The AWU agrees the reference should be to clause 11.3(b).
30. Clause 13.1(b): The AWU agrees the reference should be to clause 13.

Gas Industry Award

AIG submissions

31. Clause 13.1: The AWU agrees the reference should be to clause 10.
32. Clause 14.1: The AWU agrees amendments are required to reflect the outcome in [2019] FWCFB 4559. Given no parties filed submissions opposing that Full Bench's proposed drafting, it appears the matter could be finalised and then reflected in the exposure draft.

33. Clause 20.8(g): The AWU agrees the reference should be amended to 'weeks' and a full stop added.

34. Schedule C.1.1: The AWU agrees a space should be inserted.

35. Schedule C.1.1: The AWU agrees "(or part thereof)" should be inserted.

Manufacturing and Associated Industries and Occupations Award

AIG submissions

36. Clause 2: The AWU agrees the words identified by AIG should be in bold. The words "engine driver in charge of plant" in this clause should also be in bold.

37. Clause 2: The AWU agrees that "(c)" should be added.

38. Clause 12.8(c): The AWU agrees that commas should be inserted.

39. Clause 31.3: The AWU does not oppose this amendment.

40. Schedule C.1.1: The AWU disagrees that the heading requires amendment. The expression 'casual minimum hourly rate' is **not** more appropriate as it does not accurately reflect the entitlements in the award. Penalties and overtime in the award are calculated on the casual ordinary hourly rate, not on a 'casual minimum hourly rate'.

41. Schedule C.1.1: The AWU agrees that the typographical error should be rectified.

42. Schedule C.1.1: The AWU agrees that the additional cross-references should be added.

43. Schedule C.1.2: The AWU disagrees with amendment proposed by AIG on the same basis as that in paragraph [40] above.

44. Schedule C.2: The AWU agrees an apostrophe should be added.

45. Schedule C.2: The AWU agrees that the word 'for' should be added. The AWU disagrees that the cross reference proposed – 4.8(a)(ix) – should be added, as this refers to the incorrect subclause. The AWU submits that the correct cross-reference is 4.8(a)(xi).

46. Schedule C.3.2(a): As above.

47. Schedule C.3.2(b): The AWU does not oppose the amendments as proposed but notes the incorrect cross-reference.
48. Schedule C.3.2(b): The AWU does not oppose the amendments as proposed.
49. Schedule D.1.2, D.1.3: The AWU is not necessarily opposed to additional words for clarification regarding the source of allowances in the award but notes the incorrect cross-reference to s.4.8(a)(ix).
50. Schedule D.1.3: The AWU agrees that the words 'per hour unless otherwise stated' can be removed from the heading of the fourth column of the table.
51. Schedule D.1.3: The AWU agrees that the listed allowances are missing.
52. Schedule D.2.1: The AWU does not oppose additional words for clarification regarding the source of allowances in the award but notes the incorrect cross-reference to s.4.8(a)(ix).
53. Schedule D.2.1: The AWU notes that the words that AIG suggests should be deleted do not appear in this table.
54. Schedule D.2.1: The AWU agrees that the missing allowances should be inserted into the table.

ABI and NSWBC submissions

55. Clause 4.4: The AWU disagrees with the amendments proposed by ABI and NSWBC. The AWU suggests reverting to the wording in the current award.
56. Schedule 3.2.(a): The AWU disagrees that the table is unclear. The amendments proposed by ABI and NSWBC are unnecessary.

Pastoral Award

ABI and NSWBC submissions

57. Clause 7.2: The AWU agrees there is currently an error concerning the reference to clause 50.9(d)(iv) and submits this should be amended to 'Engagement – Woolclassers and Shearing shed experts'.

Pharmaceutical Industry Award

AIG submissions

58. Clause 2: The AWU agrees the reference should be to clause 15.1(a).

59. Clause 13.2 and 13.3: The AWU supports the inclusion of the term agreed between the parties.

60. Clause 19.2: The AWU generally agrees with the issues identified by AIG. However, the AWU considers the issues can be resolved in a manner that is more consistent with the current award by:

- amending clause 19.1(a)(iii) to read: “on a Saturday, Sunday or an RDO (unless a day off will be taken instead at a future date).”
- amend the Saturday overtime rate table in clause 19.2 in the manner proposed by AIG at paragraph [98](g) of their submissions to address the minimum engagement issue; and
- amend clause 26.2 to read: “Where an employee works on a public holiday, they will be paid at 250% of the minimum hourly rate.”

61. Schedule C.1: The AWU agrees the reference should be to clause 15.1(a).

ABI and NSWBC submissions

62. Clause 21.5: The AWU is content with the current formatting.

Waste Management Award

AIG submissions

63. Clause 11.9(c): The AWU agrees the clause should end with a reference to clause 11.9(b).

64. Clause 11.9: The AWU agrees the final paragraph should be identified as clause 11.9(h).

65. Clause 16.2(a): The AWU agrees the relevant part of this clause should read: “... any penalties or loadings or payment while they are on annual leave”.

66. Clause 22.6(a): The AWU agrees the reference should be to clause 22.5.

67. Clause 22.7(d): The AWU agrees the reference should be to clause 22.7(a).

68. Clause 27.5(d)(iii): The AWU does not agree these changes are required.

69. Schedule A.2.3: The AWU disagrees with AIG that the footnote should not be inserted. Clause 32.4 of the current award establishes a higher penalty for overtime than for ordinary time worked on public holidays. This clause does not preclude the operation of clause 32.2 of the current award, it adds to it.

70. Schedule B.2.2(a): The AWU agrees that the word 'movement' has been spelt incorrectly.



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9 DECEMBER 2019