

IN THE FAIR WORK COMMISSION

Matter Number:

AM2014/268



Submissions of the AMWU

AM2014/268

4 Yearly Review of Modern Awards

Food, Beverage and Tobacco Manufacturing Award 2010

About the Australian Manufacturing Workers' Union

The Australian Manufacturing Workers' Union (AMWU) is registered as the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union". The AMWU represents members working across major sectors of the Australian economy, including in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture. Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations across diverse industries including food technology and construction. The AMWU has members at all skills and classifications from entry level to Professionals holding degrees.

The AMWU's purpose is to improve member's entitlements and conditions at work, including supporting wage increases, reasonable and social hours of work and protecting minimum award standards. In its history the union has campaigned for many employee entitlements that are now a feature of Australian workplaces, including occupational health and safety protections, annual leave, long service leave, paid public holidays, parental leave, penalty and overtime rates and loadings, and superannuation.

Lodged by: Hugh Arjonilla

AMWU National Research Centre

Address for Service: Level 3, 133 Parramatta Rd,
Granville NSW 2142

Telephone: +61 2 8868 1500

Fax: +61 2 9897 9275

Email: hugh.arjonilla@amwu.asn.au

A. General Observations

1. This submission is made pursuant to the directions of His Honour Justice Ross¹.
2. This submission relates to drafting and technical issues arising out of the Exposure Draft (**Exposure Draft**) of *the Food, Beverage and Tobacco Manufacturing Award 2010 (the Present Award)* published on 16 November 2016.
3. The AMWU has a significant interest in the present proceedings, with coverage under its rules for a range of members covered by the Present Award.
4. To the extent that variations to the Present Award serve to aid comprehension and clarify entitlements, the AMWU supports the form and content of the Exposure Draft.
5. In circumstances where the Exposure Draft introduces, removes or alters previous content in a manner which affects meaning, effect or clarity, the AMWU identifies the offending feature, and where appropriate suggests an alternative.
6. This submission does not intend to deal with matters that are subject to a common claim, not with variations of a substantive nature.

B. Drafting and Technical Matters

7. Clause references appearing below, unless otherwise specified, are references to Exposure Draft clauses.

Clause 2 – Definitions

8. The definition of *default fund employee* has been removed.
9. The definition was inserted by decision of the Full Bench² and should be retained.

Clause 4 – Coverage

10. Clause 4.2 introduces the definition of *Food, Beverage and Tobacco Manufacturing* to the coverage clause. However, the definition is removed from clause 2 – Definitions where it is found in the Present Award.
11. Clause 4.2 should be removed and the definition re-located to clause 2.
12. Clause 4 as a whole could better identify coverage of the Award through the inclusion of sub-headings. The AMWU's proposed drafting is located at **Annexure A**.

¹ [2016] FWC 6062 as amended on 21 December 2016.

² [2013] FWCFB 10016

Clause 7 – Facilitative Provisions for flexible working practices

13. The reference to clause 22.9 within the list of facilitative provisions in clause 7.2(a) should be amended so as to read 22.9(d).

Clause 8 – Full-time employees

14. The words “*in this award*” which appear in clause 11 of the Present Award have been removed from Clause 8 of the Exposure Draft.
15. The words “*in this award*” should appear after the words “*unless otherwise specified*” in Clause 8 for clarity.

Clause 9 – Part-time employment

16. Clause 9(3)(c) introduces the verb “*start*” to replace “*commence*” in reference to a shift.
17. The AMWU supports the change but submits that the use of “*start*” as a replacement for “*commence*” should be adopted uniformly throughout the document. This would require variation at clauses:

- a. 12.5;
- b. 23.1(b);
- c. 23.1(c);
- d. 23.5(c); and
- e. 23.5(d).

Clause 10 – Casual employment

18. We note that the clause is subject to common claims.

Clause 11 - Apprentices

19. Clause 11 removes the words “*the probationary period of an apprentice must not exceed three months*” which appear at clause 14.2 of the Present Award.
20. A new clause 11.2 of the Exposure Draft should be included that recreates clause 15.10 of the *Manufacturing and Associated Industries and Occupations Award 2010*, being:

The probationary period of an apprentice is as set out in the training contract consistent with the requirement of the apprenticeship authority and with State legislation but must not exceed three months.

Clause 12 – Hours of Work

21. At page 16 of the Exposure Draft, the Commission seeks the parties’ comment on the Fair Work Ombudsman’s (FWO) submission in relation to the term “*shift worker*” within the Award.
22. The AMWU submits that a definition of a shift worker is unnecessary.

Clause 14 – Minimum Wages and Classifications

23. Clause 14 inconsistently applies ‘*wage*’ and ‘*rate*’ within the wage tables. For example, the table at clause 14(1)(a) refers to “*minimum weekly rate*” and “*minimum hourly rate*” whilst the tables at clauses 15.1 and 15.3 use “*wage*”.
24. Consistent terminology should be applied throughout the document, which should be “*minimum weekly wage*” and a “*minimum hourly rate*”, in keeping with a previous decision of the Commission³.

Clause 20 – Allowances and Special Rates

25. Clause 20 could be re-drafted so as to group allowances under an appropriate heading. This would aid comprehension of the document and distinguish between the various allowances.
26. **Annexure B** is the AMWU’s suggested drafting.

Clause 22 - Overtime

27. Clause 22.4 omits the clarification provided by clause 33.6 of the Present Award: “*except where the overtime is continuous with overtime commenced on the previous day*”. The clause should be re-drafted to accommodate the omission.
28. Clause 22.13 replaces the words “*suitable transport*” found in the Present Award with the words “*a conveyance*”. The Exposure should retain the wording of the Present Award.

Clause 24 – Annual Leave

29. Feedback⁴ is sought from the parties concerning the span over which comparison annual leave loading and allowances otherwise payable should be conducted.
30. The comparison should be a daily one.

Use of examples

31. The AMWU repeats its submission made in the context of other Award Reviews that it encourages the use of examples as aids to comprehension with respect to matters such as casual rates of pay, and overtime calculations.

C. Substantive Issues

32. In correspondence of 30 September 2016, the AMWU communicated to the Commission that it will pursue two substantive variations to the provisions of the Present Award as they concern:

³ [2014] FWCFB 9412 at [44] – [53].

⁴ p40, Exposure Draft

- a. Shift allowances; and
- b. The span of ordinary hours.

Our position in relation to these matters is unchanged.

AUSTRALIAN MANUFACTURING WORKERS' UNION
18 JANUARY 2017

ANNEXURE A

4. Coverage

4.1 Who this Award Covers

- (a) This industry award covers employers throughout Australia in the **food, beverage and tobacco manufacturing industry** and their employees in the classifications in this award to the exclusion of any other modern award.
- (b) This award covers employers which provide group training services for apprentices and/or trainees engaged in the food, beverage and tobacco manufacturing industry and/or parts of that industry, and those apprentices and/or trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this award.
- (c) This award covers any employer which supplies labour on an on-hire basis in the industry set out in clauses 4.1 and 4.2 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. This subclause operates subject to the exclusions from coverage in this award.

4.2 Who this Award does not Cover

This award does not cover employers or employees covered by:

- (a) the *Clerks—Private Sector Award 2016*;
- (b) the *Fast Food Industry Award 2016*;
- (c) the *General Retail Industry Award 2016*;
- (d) the *Horticulture Award 2016*;
- (e) the *Hospitality Industry (General) Award 2016*;
- (f) the *Manufacturing and Associated Industries and Occupations Award 2016*;
- (g) the *Meat Industry Award 2016*;
- (h) the *Poultry Processing Award 2016*;
- (i) the *Seafood Processing Award 2016*; or
- (j) the *Wine Industry Award 2016*.
- (k) an employee excluded from award coverage by the Act;

- (l) employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees; or
- (m) employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

4.3 Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

ANNEXURE B

5. Allowances and special rates

Employers must pay to an employee the allowances the employee is entitled to under this clause. See Schedule C for a summary of monetary allowances and method of adjustment.

5.1 All purpose allowances

Allowances paid for **all purposes** are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave. The following allowances are paid for all purposes under this award:

(a) Leading hands

A leading hand in charge of three or more people must be paid:

In charge of	\$ per week extra
3–10 employees	34.27
11–20 employees	51.20
more than 20 employees	65.17

(b) Heavy vehicle driving allowance

An employee who is required to drive a vehicle of more than three tonnes Gross Vehicle Weight (GVW) must be paid while they are engaged on such work:

Vehicle size	\$ per hour extra
over 3 tonnes GVW and up to 4.5 tonnes GVW	0.12
over 4.5 tonnes GVW and up to 14.95 tonnes GVW	1.03
over 14.95 tonnes GVW	1.36
a semi-trailer	2.45

(c) Boiler attendants allowance

An employee holding a Boiler Attendants Certificate and appointed by the employer to act as a boiler attendant must be paid **\$17.62** per week extra.

5.2 First Aid Allowance

An employee must be paid **\$15.58** per week extra if they are:

- (a) The current holder of appropriate first aid qualifications such as a certificate from the St John Ambulance or similar; and

- (b) Appointed by their employer to perform first aid duty.

5.3 Special rates

Subject to clause 5.3(a), the following special rates described in this clause must be paid to an employee including a junior.

(a) Special rates are not subject to penalty additions

The special rates in clause 5.2 must be paid irrespective of the times at which the work is performed, and are not subject to any premium or penalty additions.

(b) Cold places

An employee who works for more than one hour in places where the temperature is reduced by artificial means below 0 degrees Celsius must be paid **\$0.58** per hour extra. In addition, where the work continues for more than two hours, the employee is entitled to 20 minutes' rest after every two hours' work without loss of pay.

(c) Hot places

- An employee who works for more than one hour in the shade in places where the temperature is raised by artificial means must be paid:

Temperature	\$ per hour extra
Between 46 and 54 degrees Celsius	0.60
In excess of 54 degrees Celsius	0.78

- In addition, where work continues for more than two hours in temperatures exceeding 54 degrees Celsius, the employee is entitled to 20 minutes' rest after every two hours work without loss of pay.
- The temperature is to be determined by the supervisor after consultation with the employee who claims the extra rate.

(d) Wet places

- An employee working in any place where their clothing or boots become saturated by water, oil or another substance must be paid **\$0.60** per hour extra. Any employee who becomes entitled to this extra rate must be paid this rate only for the part of the day or shift that they are required to work in wet clothing or boots.
- This clause does not apply to an employee who is provided by the employer with suitable and effective protective clothing and/or footwear.

(e) Confined spaces

An employee working in a confined space must be paid **\$0.78** per hour extra.

(f) Dirty or dusty work

An employee who performs work of an unusually dirty, dusty or offensive nature must be paid **\$0.60** per hour extra.

(g) Fumigation gas

An employee using methyl bromide gas in fumigation work must be paid **\$7.87** per day extra for any day on which the employee is required to use this gas.

5.4 Expense-related allowances

(a) Meal allowance

An employee must be paid a meal allowance of **\$13.81** on each occasion the employee is entitled to a rest break in accordance with clause **Error! Reference source not found.**, except in the following circumstances:

- (i)** if the employee is a day worker and was notified no later than the previous day that they would be required to work such overtime; or
- (ii)** if the employee is a shiftworker and was notified no later than the previous day or previous rostered shift that they would be required to work such overtime; or
- (iii)** if the employee lives in the same locality as the enterprise and could reasonably return home for meals; or
- (iv)** if the employee is provided with an adequate meal by the employer.

- (b)** If an employee has provided a meal or meals on the basis that they have been given notice to work overtime and the employee is not required to work overtime or is required to work less than the amount advised, they must be paid the prescribed meal allowance for the meal or meals which they have provided but which are surplus.

(c) Vehicle allowance

An employee who reaches agreement with their employer to use their own motor vehicle on the employer's business, must be paid **\$0.78** per kilometre travelled.

(d) Damage to clothing, spectacles and hearing aids

The employer is liable for the replacement, repair or cleaning of any clothing or personal equipment including spectacles and hearing aids

where an employee suffers any damage to, or soiling of, clothing or other personal equipment, including spectacles and hearing aids, as a result of:

- (i) performing any duty required by the employer; and
- (ii) negligence of the employer.

(e) Special clothing and equipment allowance

Where an employee is required to wear special clothing and equipment, the employer must reimburse the employee for the cost of purchasing and laundering such special clothing and equipment unless the clothing and equipment is paid for and/or laundered by the employer.

(f) Transfers, travelling and working away from usual place of work

(i) Excess travelling and fares

An employee required to start and/or finish work at a job away from the employer's usual workplace must be paid:

- travelling time for all time reasonably spent by the employee in reaching and/or returning from the job which is in excess of the time normally spent by the employee in travelling between the employee's usual residence and the employee's usual workplace; and
- any fares reasonably incurred by the employee which are in excess of those normally incurred in travelling between the employee's residence and the employee's usual workplace,
- or if the employee used their own means of transport, any fares which would have been incurred by the employee had the employee not used their own means of transport, except where the employee has an arrangement with their employer for a regular allowance.

(ii) Distant work

- An employee required to remain temporarily away from the employee's usual residence because the employee is working temporarily in a locality away from the employee's usual workplace must be paid travelling time for necessary travel between the locality and the employee's usual workplace and expenses.
- After each four week period on distant work an employee is entitled to be paid for a return fare reasonably incurred for personal travel between the locality and the employee's usual residence, unless such distant work is inherent in the normal work of the employee.

(iii) Transfer involving change of residence

An employee required to transfer permanently from the employee's usual workplace to another locality must be paid travelling time for necessary travel between the employee's usual workplace and the new locality and expenses for a period not exceeding three months or, where the employee is in the process of buying a residence in the new locality, for a period not exceeding six months. Payment for travel time and expenses ceases after the employee has taken up permanent residence in the new locality.

(iv) Travelling time payment

The rate of pay for travelling time is:

- the applicable rate of pay on Monday to Saturday, and
- 150% of the applicable rate of pay on Sundays and public holidays.

The maximum travelling time to be paid for is 12 hours out of every 24 hours or, when a sleeping berth is provided by the employer for all-night travel, eight hours out of every 24 hours.

(v) Expenses for the purposes of clause 5.4(f) means:

- all fares reasonably incurred;
- reasonable expenses incurred while travelling including **\$13.81** for each meal taken; and
- a reasonable allowance to cover the cost incurred for board and lodging.

(g) Training costs

This provision may be affected by [AM2016/14](#)

- (i)** Any costs associated with standard fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available in the employer's technical library) incurred by an employee in connection with training agreed to by the employer must be reimbursed by the employer on the production of evidence of such expenditure by the employee, provided that reimbursement may be on an annual basis subject to the presentation of reports of satisfactory progress.
- (ii)** Travel costs incurred by an employee undertaking training agreed to by the employer, which exceed those normally incurred in travelling to and from work, must be reimbursed by the employer.

- (iii) Clause 5.4(g) does not apply to costs associated with training that are in connection with an apprentice's training contract. Such costs are subject to clause **Error! Reference source not found.** and not this clause.

5.5 Extra rates not cumulative

The extra rates in this award, except rates prescribed in clause 5.2—Special rates and rates for work on public holidays, are not cumulative so as to exceed the maximum of double the applicable rate of pay.