

NATIONAL OFFICE

Level 1, 16-20 Good Street, Granville NSW 2142
T: 02 8005 3333 E: members@nat.awu.net.au W: www.awu.net.au
Daniel Walton National and NSW Secretary



ABN 28 853 022 982

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

AM2019/17

AWU SUBMISSION 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. The Australian Workers’ Union’s (“**AWU**”) submissions concerning the Second Tranche of exposure drafts are below.

Airline Operations – Ground Staff Award

4. The outcome of the Full Bench Decision in [2019] FWCFB 5619 concerning Sunday overtime rates for non-continuous shiftworkers has been correctly reflected in clause 24.1(a)(ii) of the exposure draft. However, the rates tables in Schedule B have not been updated to reflect the outcome. In relation to the tables in Schedule B.2.4, B.3.4, B.4.4 and B.5.4, the Monday to Sunday column for non-continuous shiftworkers should be amended to Monday to Saturday and a new column added containing the 200% Sunday rate.

Alpine Resorts Award

5. Clause 10.1(b) and 15.3: The words “no more than 38 hours per week” should be amended to “less than 38 hours per week”. If this does not occur, a part-time employee can arguably work an average of 38 ordinary hours per week. This change is consistent with what was substantively agreed between the

¹ [2019] FWCFB 6861.

AWU and the Australian Ski Areas Association (“**ASAA**”) earlier in the award review.

6. Clause 21.3(e)(ii): The numeral “8” should be inserted where the word “eight” has been deleted in the first dot point.

Asphalt Industry Award

7. Clause 14.2(a): The numeral “7.5” has not been added despite the corresponding words being deleted.
8. Clause 19.2: An additional row should be added for overtime work on a public holiday with a 250% rate and a four-hour minimum engagement. This reflects the entitlement in clause 28.3 of the current award.
9. Clause 26.2: Clause 28.3 in the current award does not confine the 250% penalty rate to ordinary hours on public holidays – it applies equally to overtime.
10. Schedule A.2.2: A public holiday column can be added with a penalty rate of 250%.
11. Schedule A.2.3 and A.3.3: A Sunday penalty rate column has been omitted. The correct rate is 200%.

Concrete Products Award

12. Clause 11.3(b): In response to the Commission’s request in the exposure draft, the cross-reference to clause 11.3(c) is incorrect. This should be amended to clause 11.3(b) or “this clause”.
13. Clause 21.7: The word “rate” is missing at the end of the sentence.
14. Clause 21.9(b)(iii): The corresponding provision in the current award applies equally to continuous and non-continuous work. To maintain this outcome, clause 21.9(b)(iii) should be renumbered as clause 21.9(c) and a consequential change made to the next clause.
15. Schedule B.3.2: The heading can be amended to (added words underlined): “Monday to Sunday and public holidays”.
16. Schedule B.3.3: A new column can be added with a 200% rate for all work on public holidays.

Dry Cleaning and Laundry Industry Award

17. Schedule C.1.2 and C.1.3: It may be clearer if all the shiftwork rates for ordinary hours are combined into one table. This approach has been taken for casual shiftwork rates in Schedule C.3.5 and C.3.6.

Gas Industry Award

18. Clause 14.1: There may be scope for the exposure draft to be amended to reflect the outcome in [2019] FWCFB 4559. It does not appear any submissions were filed opposing the relevant Full Bench's draft variations.

Manufacturing and Associated Industries and Occupations Award

19. Clause 39.2: The cross-reference to clause 32.2(i) should be clause 32.2(j).
20. Schedule C.1.1: The 250% rate for overtime on a public holiday rate for day workers (arising from clause 31.7(a)) has been omitted.

Pastoral Award

21. Clause 11.7: The inclusion of this provision in clause 11 of the exposure draft may cause confusion because clause 11 is otherwise solely concerned with casual employees and this provision is directed at weekly employees. The corresponding provision appears in clause 10.6 of the current award – but clause 10 deals with all categories of employment. An option to avoid extensive renumbering would be inserting this provision as a new clause 8.3 in the exposure draft.
22. Clause 19.2: The bracketed example should be deleted because it has the potential to undermine the NES for the reasons identified by a Full Bench of the Commission in *RACV*.²
23. Clause 24.3: It would be simpler if the cross-reference to clause 41 was amended to clause 44 because this is where the rates appear. Clause 41 only refers the user to clause 44.
24. Clause 37.1(b)(ii): The reference to clause 30.1(a) is an error. The correct cross-reference appears to be clause 37.1(a).
25. Clause 38.6: The reference to a “continuous hours shiftworker” should be amended to a “continuous work shiftworker” because “continuous work” is the term defined in clause 38.2.

² *RACV Road Service Pty Ltd v Australian Municipal, Administrative, Clerical and Services Union* [2015] FWCFB 8554.

26. Schedule B: It has been agreed during Overtime for Casuals award review common issue proceedings that the 25% casual loading is paid on a cumulative basis for overtime hours under the current award.³ As a result, casual overtime rate tables can be inserted into the broadacre farming and livestock operations, pig breeding and raising and poultry farming sections of Schedule B.

Waste Management Award

27. Clause 22.2: The words “but it is not payable on leave paid out on termination” should be replaced with “and is payable on leave paid out on termination”. The current wording is inferior to the NES because s 90(2) of the FW Act requires that the leave loading also be paid for leave accrued and paid out on termination.⁴



Stephen Crawford
SENIOR NATIONAL LEGAL OFFICER

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³ See: <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201751-sub-abinswbc-041119.pdf>

⁴ *Centennial Northern Mining Services v Construction, Forestry, Mining and Energy Union* [2015] FCAFC 100.