

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Further Submission

Finalisation of Exposure Drafts –
Tranche 2

Manufacturing and Associated
Industries and Occupations Award
(AM2019/17)

23 December 2019

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GROUP

4 YEARLY REVIEW OF MODERN AWARDS

FINALISATION OF EXPOSURE DRAFTS – TRANCHE 2

MANUFACTURING AND ASSOCIATED INDUSTRIES AND OCCUPATIONS AWARD

1. This short further submission addresses certain issues that were discussed at the hearing on 18 December 2019, regarding casual rates in the Exposure Draft of the *Manufacturing and Associated Industries and Occupations Award (Award)*.
2. The relevant references in the [transcript of proceedings](#) are PN217 – PN219, and PN261 – PN278.
3. The relevant references in the Commission’s Statement of 11 December 2019 are paragraphs [142] - [151], and [165] - [169].

Clause 11.2

4. In its submission of 27 November 2019, at paragraph 23, the AMWU has proposed the following modified wording for clause 11.2 in the exposure draft:

11.2 Casual loading

- (a) For working ordinary time, a casual employee must be paid:
 - (i) the ordinary hourly rate for the work being performed; plus
 - (ii) a loading of 25% of the ordinary hourly rate.
- (b) The casual loading constitutes part of the casual employee’s all purpose rate.
- (c) The resulting rate is the casual ordinary hourly rate.
- (d) Where this award refers to a penalty rate or shift loading as being calculated as a percentage of the ordinary hourly rate, that reference will (for a casual employee) instead be taken to be a reference to the casual ordinary hourly rate.
- ~~(d)~~(e) The 25% casual loading in this clause 11.2 does not apply to vehicle manufacturing employees in the technical field covered by clause 4.8(a)(ix). The casual loading for these employees is prescribed in clause 46 in Part 9— Vehicle manufacturing employees of this award.

5. The above wording is problematic in circumstances where a particular entitlement uses the expression “ordinary hourly rate” but the entitlement does not apply to a casual employee, e.g. clause 31.12(d) and (e) – the 10 hour break provision.
6. We would not object to the following modified wording for paragraph (d) above:
 - (d) Where this award refers to a penalty rate or shift loading as being calculated as a percentage of the ordinary hourly rate, that reference will (for a casual employee) instead be taken to be a reference to the casual ordinary hourly rate if the entitlement is applicable to a casual employee.

Schedule C – Table C.1.1

7. With regard to Table C.1.1, at paragraph 32 of the AMWU’s reply submission of 9 December 2019, the union states:

31. The AiG submit:

“The following amendment should be made to the heading of the second column of the table:

% of ordinary hourly rate/~~minimum~~ casual ordinary minimum hourly rate

The expression ‘minimum casual ordinary hourly rate’ is likely to confuse readers of the award, given its similarity to the expression ‘casual ordinary hourly rate’ which is a defined term in the award and has a different meaning. The expression ‘casual minimum hourly rate’ is a more appropriate term. This term is defined in clause C.3.1.”

32. The AMWU agrees that the term ‘minimum casual ordinary hourly rate’ is liable to confuse users of the award. However rather than changing the column to ‘casual minimum hourly rate’ the AMWU proposes it be changed to ‘casual ordinary hourly rate’ because the relevant penalties in the table at C.1.1 are calculated on the ordinary hourly rate (which for a casual is the casual ordinary hourly rate).
8. There are two problems with what the AMWU has proposed:
 - (a) Not all of the entitlements in table C.1.1 apply to casuals, e.g. clause 31.12(d) and (e) – the 10 hour break provision; and

- (b) Not all of the entitlements in table C.1.1 are calculated on the 'ordinary hourly rate' or the 'casual ordinary hourly rate'. For example, the following entitlements for vehicle manufacturing employees are calculated on the 'minimum hourly rate' and the 'casual minimum hourly rate':

Night shift only (clause 54.1(b)(ii))	130%
Alternating night and afternoon shifts (clause 54.1(b)(ii))	118%
Alternating day and night shifts—rate for the night shift (clause 54.1(b)(ii))	112.5%
Afternoon shift only (clause 54.1(b)(ii))	118%
Alternating day and afternoon shifts—rate for the afternoon shift (clause 54.1(b)(ii))	112.5%
Alternating day, afternoon and night shifts—rate for the afternoon and night shift (clause 54.1(b)(ii))	112.5%
Continuous afternoon or night shift (clause 54.1(b)(iv))	112.5%
Saturday (clause 54.1(b)(v))	125%

9. Given the above, an appropriate heading for the second column of table C.1.1 would be:

% of ordinary hourly rate/casual ordinary hourly rate/minimum hourly rate/casual minimum hourly rate