

IN THE FAIR WORK COMMISSION

Matter No: AM2019/17

Four Yearly Review of Modern Awards –Finalisation of Exposure Drafts – Manufacturing and Associated Industries and Occupations Award 2020.

AMWU AND AI GROUP JOINT REPORT

Background

1. This report is made pursuant to the Statement¹ published on 2 July 2020 by Commissioner Bissett regarding the above matter. In that Statement parties were informed that an issue had been identified by the Fair Work Commission ('**FWC**') concerning entitlements to Sunday and public holiday penalty rates for vehicle manufacturing employees engaged in shiftwork in the *Manufacturing and Associated Industries Award 2020 (the Manufacturing Award 2020)*. Specifically, that these entitlements appear to have been omitted from the Manufacturing Award 2020.
2. Commissioner Bissett further noted that previously, in the *Vehicle Manufacturing, Repair, Services and Retail Services Award 2010 (the Vehicle Award 2010)*, vehicle manufacturing employees engaged in shiftwork were entitled to penalty rates for Sunday and public holiday work in accordance with clauses 55.5 and 55.6 of the Vehicle Award 2010.
3. It is the parties' view that these entitlements have not carried across into the Manufacturing Award 2020, nor have vehicle manufacturing shiftworker employees absorbed any equivalent entitlements under the award. Therefore, the parties agree that under the current Manufacturing Award 2020, vehicle manufacturing shiftwork employees have no entitlement to Sunday and public holiday penalty rates.

Historical approach

4. It was the parties' intention when reviewing the inclusion of vehicle manufacturing provisions into the manufacturing award during the 4 yearly review process, to retain pre-existing vehicle manufacturing shiftworker provisions in a distinct vehicle manufacturing part within the award. This was because the shiftworker provisions and arrangements in the former *Manufacturing and Associated Industries Award 2010 (the Manufacturing Award 2010)* were markedly different to those that covered vehicle manufacturing employees under the Vehicle Award 2010.
5. This approach is evident in the current drafting of the Manufacturing Award 2020, where distinct vehicle manufacturing shiftworker provisions are contained in Part 9 at clause 49 (Ordinary hours of work – shiftworkers – vehicle manufacturing employees) and clause 55 (Shiftwork and rates – vehicle manufacturing employees).

¹ [2020] FWC 3396

AMWU and Ai Group position

6. The parties agree with Commissioner Bissett's provisional view that there is an error in the Manufacturing Award 2020 and that the error should be corrected. The parties support the draft correction determination provided as Attachment A to the Statement (**'the FWC draft determination**).
7. It is apparent that the FWC draft determination seeks to re-insert clauses 55.5 (Penalty rates for Sunday work) and 55.6 (Penalty rates for public holiday work) from the former Vehicle Award 2010.
8. This approach is consistent with the approach adopted by the parties formally, as described above. It also remains appropriate given the disparities between the general manufacturing shiftworker rates (as prescribed at clause 33.2 (Rates for shiftworkers) of the Manufacturing Award 2020, and the rates for vehicle manufacturing shiftworker employees under the Vehicle Award 2010.
9. For example, both continuous and non-continuous vehicle manufacturing employees who work on an afternoon or night shift on a public holiday are entitled to a 250% public holiday penalty rate. This contrasts with manufacturing continuous shiftworkers who are only entitled to 200% public holiday penalty rate.
10. It is for these reasons that the parties' view the provisional approach taken by the FWC as appropriate.
11. The parties note that if the FWC draft determination is adopted, the current clause 55.2 (Payments stand alone) provision) will need to be renumbered as clause 55.4

End.