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21 July 2016

Re: AM2014/254 AWU reply submissions on the exposure draft for the *Airline Operations – Ground Staff Award 2016*

Background

1. On 10 May 2016 the President, Justice Ross published a Statement and Directions regarding a plain language pilot and Group 4 awards.
2. The Directions require the filing of reply submissions regarding drafting and technical issues for most of the Group 4A, B and C exposure drafts by 21 July 2016.
3. The Australian Workers' Union's (AWU) submissions in response to those filed by the following organisations in relation to the exposure draft of the Airline Operations – Ground Staff Award 2016 (Exposure Draft) appear below:
 - Australian Industry Group: 30 June 2016
 - Qantas Group: 30 June 2016

Australian Industry Group (AIG)

4. Clause 2: We agree the reference to clause 18.3 in the definition of “ordinary hourly rate” should be amended to clause 18 generally.
5. Clause 11.1: We do not see any issues with the wording in the Exposure Draft.

6. Clause 11.2: AIG's ongoing agitation of this issue is giving the AWU hope that there may be scope to make a submission to the High Court in late 2016 regarding its decision in *Electrolux Home Products Pty Ltd v Australian Workers' Union* [2004] HCA 40. The Commission determined on a general level that the casual loading will be applied to the ordinary hourly rate on 30 September 2015¹.
7. Clause 17.3: We see no issue with the expressions used in the Exposure Draft.
8. Clause 18: We are not opposed to the amendment suggested by AIG although it is doubtful that any confusion would arise from the existing provisions.
9. Schedule B: We do not agree that the existing provisions are misleading. Schedule B.1.1 and B.1.2 clearly explain that the rates in the tables do not include any all purpose allowances and that these allowances would have to be included in the calculations where applicable. The rates in the table accurately reflect the lowest possible "ordinary hourly rate" calculations for this Exposure Draft because there are not any all purpose allowances that apply to all employees.
10. There can be no doubt about how a Court (or an Ombudsman) would interpret the application of all purpose allowances based on the current Exposure Draft including Schedule B. In contrast, if AIG's proposal is accepted, a situation will be created whereby the body of the Exposure Draft will indicate the relevant penalty or loading is applied to the "ordinary hourly rate" whereas the rates table will indicate the loading is applied to the "minimum hourly rate". This type of conflict and ambiguity is exactly what the Exposure Draft is attempting to eliminate.
11. It also appears AIG may be giving insufficient credit to employers and payroll staff that would be likely to realise something is amiss if they are not paying any additional amounts to an employee that is known to be entitled to an additional allowance.

Qantas Group (Qantas)

12. Clause 21: In accordance with paragraph [18] of our submissions dated 30 June 2016, we disagree that this amount should be frozen in time. The intent of the provision is clearly to ensure meaningful insurance is obtained by an employer and this will be diminished if the amount is not varied over time. If

¹ 4 yearly review of modern awards [2015] FWCFB 6656 at [110]

the intent of an award is for an amount to be fixed indefinitely, this is normally clearly stated – for example, the special allowance in clause 21.1 of the *Building and Construction General On-site Award 2010*.

A handwritten signature in black ink, appearing to read 'SCrawford', written in a cursive style.

Stephen Crawford

SENIOR NATIONAL LEGAL OFFICER