

## IN THE FAIR WORK COMMISSION

**Matter No.:** AM2014/203 & AM2016/33 Graphic Arts, Printing and Publishing Award 2010

**Re Application by:** "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)



### **Submissions in reply of the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)**

#### **4 Yearly Review of Modern Awards**

## **COVER SHEET**

### **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.

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## **Introduction**

1. The Australian Manufacturing Workers' Union (AMWU) seeks permission to lodge the following written submissions in reply to the various submissions lodged by the employer parties.
2. These written submissions will assist the Fair Work Commission and the parties to further narrow the areas of disagreement. The written submissions will also provide parties advance notice of the material which the AMWU would otherwise intend to submit and rely upon at the hearings which are currently due to be held on 29 May and 30 May.
3. These submissions will address the following issues:
  - a. The Fairfax proposal for daily newspaper Annual Leave;
  - b. Jury Service make-up pay;
  - c. Redundancy;
  - d. Personal Leave;
4. The AMWU understands that all parties either agree that the coverage of the Graphic Arts, Printing and Publishing Award 2010 (Graphic Arts Award 2010) should be amended to be clear that it covers all daily newspaper offices or parties have remained explicitly silent on the issue.

### **Fairfax Proposal for Daily newspaper Annual Leave**

5. Fairfax propose an alternative draft determination to the proposal by the AMWU:

“By deleting the words “This provision does not apply to a shiftworker as defined in clause 37.4” in clause 37.2 of the Award and in their place inserting the Award(sic):

“Where there is an agreement between an employer and an employee under this clause 37.2, this clause 37.2 applies to the employee instead of clause 37.4.”
6. The AMWU understands that practically, employees at the various daily newspaper print site receive a total of about 6 weeks and 3 days, which effectively means that they do not receive the 5 weeks shiftworker NES Annual leave entitlement plus an additional 2 weeks and 3 days.
7. On this basis the AMWU agrees that employees to enter into an agreement under clause 37.2 should not also have the definition of shiftworker for the purpose of the NES apply to them.

## **Jury Service make-up pay**

8. The employer submissions point to the *Award Modernisation Priority Industries Decision* [2008] ARICFB 1000<sup>1</sup> decision as a precedent for excluding all jury service make-up pay. This is an incorrect analysis of the decision and the way in which the matters dealt with in the decision should be interpreted.
9. The decision provides a general in-principle decision not to include jury make-up service as a standard applying across the Modern Award System. However, this should not be taken to mean that where the entitlement did exist as a standard, that it cannot be included in an industry or occupational award. The particular paragraph quoted by the employer submissions, must be read in the context of the entire decision. All of the matters dealt with by the decision were matters of general principle which were applicable to the entire Modern Award System. All of these matters of general principle were subject to the individual circumstances of the particular award being made and the contents of the pre-modern awards being modernised.
10. This analysis aligns with the other subject matter dealt with in the decision, such as Coverage, Award Flexibility, Consultation, Dispute Resolution, Types of Employment (in particular casual employment), Termination of Employment, Redundancy, National training wage, Supported Wage System, Allowances where the Commission's decision lead to Modern Award System wide adoption, but was subject to parties presenting specific evidence about the contents of the pre-modern awards which were being modernised. Where parties presented industry or occupational standards, then these were generally accepted into the Modern Award.
11. Another indication that the decision did not intend to completely rule out jury service make-up pay, is that the same decision made an award which did contain jury service make-up pay. This is the clearest indication that the Full Bench, intended the in-principle decision to be subject to the specific circumstances of the pre-modern awards, which may result in the inclusion of jury service make-up pay. The *Award Modernisation Priority Industries Decision* [2008] AIRCFB1000 also at paragraph [177] and Attachment A made the first version of the *Manufacturing and Associated Industries and Occupations Award 2010*. Clause 43.2 of this award as made contained "reimbursement for jury service."
12. As conceded by the employer parties, the pre-modern awards did contain a standard for jury service make-up pay, that applied to daily metropolitan newspapers. This safety net standard should continue to exist for employees in this industry.

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<sup>1</sup> <https://www.fwc.gov.au/documents/decisionssigned/html/2008aircfb1000.htm>

## Redundancy

13. There is an industry standard for redundancy.
14. The standard is based on analysis at both:
  - a. the pre-modern award level; and
  - b. the current Enterprise Agreement level.
15. At the pre-modern award level, a majority of pre-modern awards covering a majority of employers in the industry had the entitlement to the daily newspaper redundancy.
16. The employer group analysis of redundancy entitlements do not all include the specific redundancy awards relevant to the industry:
  - a. AN160260 – “Printing (West Australian Newspapers Limited, Guaranteed Employment and Voluntary Retirement)” Award<sup>2</sup>
  - b. AP788783 - Metropolitan Daily Newspapers Redundancy Award 1999<sup>3</sup>
17. Further the employer groups’ analysis of these two awards is also contested by the AMWU.
18. In relation to the “Printing (West Australian Newspapers Limited, Guaranteed Employment and Voluntary Retirement)” Award the employers say that this award only applies to voluntary redundancies. This is not entirely correct. The operation of the award specified particular processes, which sought to prioritise a focus on finding suitable employment for employees over redundancies.
19. The practical effect of the award considered as a whole is that the company guaranteed employment, training and/or alternative suitable employment or provided redundancy entitlements. Where these options did not result in employment for employees that did not cause undue mental stress or physical demands, then there was a mechanism for a redundancy to take place.
20. The employer’s analysis also doesn’t take into account clause 11.4 which provides clearly:

*“11(4) Where alternative satisfactory employment cannot be found within three months, the Company will terminate employees referred to in subclause (3) of this clause, in accordance with clause 12. - Termination Compensation, of this award.”*
21. It is not correct to say that the award only applies to circumstances of voluntary redundancy.

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<sup>2</sup> [https://www.fwc.gov.au/documents/consolidated\\_awards/an/an160260/asframe.html](https://www.fwc.gov.au/documents/consolidated_awards/an/an160260/asframe.html)

<sup>3</sup> [https://www.fwc.gov.au/documents/consolidated\\_awards/ap/ap788783/asframe.html](https://www.fwc.gov.au/documents/consolidated_awards/ap/ap788783/asframe.html)

22. The employer groups argue that the News Corp awards should not be included because they were enterprise awards which are excluded from the industry award processes.
23. The Metropolitan Daily Newspapers Redundancy Award 1999 applied to the five News Corp entities and applied to all employees of those entities who were covered by an award. In setting an industry standard the Commission should not completely ignore the entitlements which exist in the industry, particularly where a large part of the industry was covered by this particular award. The Modern Award and Enterprise Modern Awards have a relationship with each other.
24. The legislative requirements of the Enterprise Award Modernisation process, set out in Schedule 6 of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 include specific reference to consideration to be given by the Commission to the modern award and the terms and conditions of the modern award. Item 4(5)(b) and (c) stipulate that:

“4(5) In deciding whether or not to make a modern enterprise award, and in determining the content of that award, the FWC must take into account the following:

...

- (b) whether there is a modern award (other than the miscellaneous modern award) that would, but for the enterprise instrument, cover the persons who are covered by the instrument, or whether such a modern award is likely to be made in the Part 10A award modernisation process;
- (c) the content, or likely content, of the modern award referred to in paragraph (b) (taking account of any variations of the modern award that are likely to be made in the Part 10A award modernisation process);

...”

25. It makes sense that in establishing industry terms and conditions for industry awards that the Commission should also take into account what the actual industry standard is.
26. On the second level of analysis the relevant Enterprise Agreements which contain the current terms and conditions applicable to daily metropolitan newspapers also reveals the true industry standard which currently exists.
27. All of the relevant employers who have had submissions made on their behalf to the current proceedings, presently engage employees with a redundancy entitlement that is equal to the prevailing standard which the AMWU is seeking.
28. Attached to this submission is a table with a summary of the entitlements in the Enterprise Agreements and the links to the relevant Enterprise Agreements applying to employees who work on metropolitan daily newspapers including the agreements applying to:

- a. West Australian Newspapers;<sup>4</sup>
  - b. The Ballarat site of Fairfax where the Age is printed;<sup>5</sup>
  - c. The Richmond site of Fairfax where the Sydney Morning Herald is printed;<sup>6</sup>
  - d. The Canberra site where the Canberra Times is printed;<sup>7</sup>
  - e. All the News Corp sites where the News Corp metropolitan daily newspapers are printed.<sup>8</sup>
29. Every site where metropolitan daily newspapers are printed provide the industry standard for redundancy. This is a ubiquitous standard that exists currently for employees.
30. The submissions of ABI and the NSW Business Chamber Ltd indicate that they have concerns about this standard applying to pre-press. However, the witness statement of Mr Daryl Makins indicates that there are pre-press employees who do have the standard apply to them at paragraph 14 and 15 of his statement.
31. A specific exclusion for pre-press employees working at other locations to a site where printing occurs is not appropriate because these employees are part of the industry performing work for the industry. Granting an exclusion for the “off-site” locations described by Mr Makins would be rewarding the exploitation of a loop hole in the current system.
32. News Corp has employed people at other sites and designated that because the coverage clauses are geographical in nature, these employees performing work towards the production of the daily newspaper should not be covered by the relevant award and have access to the relevant standards of employment. This kind of technical legalistic evasion of the safety net standard should not be given the stamp of approval by the Commission.

### **Personal Leave**

33. For personal leave, at an industry level there is not the same level of ubiquity as there exists for redundancy.
34. However, there does still exist a significant number of sites across the industry where this entitlement exists.

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<sup>4</sup> Western Australian Newspapers Production Employees Enterprise agreement AG2016/3995

<sup>4</sup><https://www.fwc.gov.au/documents/documents/agreements/fwa/ae420973.pdf>

<sup>5</sup> Rural Press Printing Ballarat Employees Enterprise Agreement AG2013/10627

<sup>5</sup><https://www.fwc.gov.au/documents/documents/agreements/fwa/ae404532.pdf>

<sup>6</sup> Rural Press Printing North Richmond Enterprise Agreement AG2016/2030

<sup>6</sup><https://www.fwc.gov.au/documents/documents/agreements/fwa/ae417634.pdf>

<sup>7</sup>

Rural Press Printing T/as Capitals Fine Print Workplace Agreement AG 2013/7950

<sup>7</sup><https://www.fwc.gov.au/documents/documents/agreements/fwa/ae403123.pdf>

<sup>8</sup> NewsCorp Australia AMWU Metropolitan Printing Agreement

<sup>8</sup><https://www.fwc.gov.au/documents/documents/agreements/fwa/ae413904.pdf>

35. The significance of a 24/7 roster and the impact this might have on the personal health of workers has resulted in the higher standard being negotiated over the history of this industry. Longer term productivity improvements of a shift working workforce should include positive health maintenance plans which allow for access to general practitioners during the hours of the day where general practitioners are available.

**End**

**23 May 2017**

## Entitlement Summary

<b>Award/ Enterprise Agreement</b>	<b>Rural Press Printing(T/A Capital Fine Print Workplace Agreement AG2013/7950<sup>1</sup></b>	<b>Western Australian Newspapers Production Employees Enterprise Agreement AG2016/3995<sup>2</sup></b>	<b>Rural Press Printing Ballarat Employees Enterprise Agreement AG2013/ 10627<sup>3</sup></b>	<b>Rural Press Printing North Richmond Enterprise Agreement – AG 2016/2030<sup>4</sup>. Nth Richmond SMH</b>	<b>Newscorp Australia _ AMWU Metropolitan Printing Agreement 2014<sup>5</sup></b>	<b>Regional Daily Newspaper Printing Award 2001<sup>6</sup></b>	<b>Printing (Western Australian Newspapers Limited, Guaranteed Employment and Voluntary Retirement Award)<sup>7</sup></b>	<b>Fairfax Printers Award 1999<sup>8</sup></b>	<b>Metropolitan Daily Newspapers Redundancy Award 1999<sup>9</sup></b>	<b>Printing Industry – Herald and weekly times- Production Award 2003. <sup>10</sup></b>
<b>Redundancy</b>	<b>29</b> <ul style="list-style-type: none"> <li>For each year up years of service – 4 weeks</li> <li>No redundancy where alternative employment offer rejected.</li> </ul>	<b>16</b> <ul style="list-style-type: none"> <li>Volunteer then compulsory</li> <li>4 weeks for each year of service</li> <li>Or 1 weeks for each three months of service</li> <li>Pay calculation includes shift, margins, weekends but not overtime.</li> </ul>	<b>4.9.4</b> <ul style="list-style-type: none"> <li>4 weeks base rate for each year of service</li> <li>All loadings but not overtime.</li> </ul>	<b>26</b> <ul style="list-style-type: none"> <li>For each year of service up to 10 years - 4 weeks pay</li> <li>For each additional year after 10 years its 3 weeks,</li> <li>Calculated at an annualised wage not base rate.</li> </ul>	<b>22</b> <ul style="list-style-type: none"> <li>2 weeks pay first instance</li> <li>4 weeks for each year of service</li> </ul>	<b>4.9</b> <ul style="list-style-type: none"> <li>4 weeks base rate for each year of employment</li> <li>Or pro rata based on ¼ years service</li> </ul>	<b>6</b> <ul style="list-style-type: none"> <li>Guarantees no employees compulsorily retrenched</li> </ul> <b>11</b> <ul style="list-style-type: none"> <li>Where redeployment end reemployment is not successful Employees may elevate redundancy</li> </ul> <b>12.</b> <ul style="list-style-type: none"> <li>4 weeks pay for 1-10 years service</li> <li>Over 10 years, 3 week each year plus 1 week pay for every four months of additional service.</li> </ul>	<b>11</b> <ul style="list-style-type: none"> <li>4 weeks for 1-2 years</li> <li>8 weeks for 4 years and over</li> </ul>	<b>7</b> <ul style="list-style-type: none"> <li>2 weeks pay first instance</li> <li>4 weeks for each year of service</li> </ul>	<b>9</b> <ul style="list-style-type: none"> <li>4 weeks for over 5 years</li> <li>Over 45 additional weeks notice or payment in lieu of notice</li> </ul>

<sup>1</sup> <https://www.fwc.gov.au/documents/documents/agreements/fwa/ae403123.pdf>

<sup>2</sup> <https://www.fwc.gov.au/documents/documents/agreements/fwa/ae420973.pdf>

<sup>3</sup> <https://www.fwc.gov.au/documents/documents/agreements/fwa/ae404532.pdf>

<sup>4</sup> <https://www.fwc.gov.au/documents/documents/agreements/fwa/ae417634.pdf>

<sup>5</sup> <https://www.fwc.gov.au/documents/documents/agreements/fwa/ae413904.pdf>

<sup>6</sup> [https://www.fwc.gov.au/documents/consolidated\\_awards/ap/ap811502/asframe.html](https://www.fwc.gov.au/documents/consolidated_awards/ap/ap811502/asframe.html)

<sup>7</sup> [https://www.fwc.gov.au/documents/consolidated\\_awards/an/an160260/asframe.html](https://www.fwc.gov.au/documents/consolidated_awards/an/an160260/asframe.html)

<sup>8</sup> [https://www.fwc.gov.au/documents/consolidated\\_awards/an/an160260/asframe.html](https://www.fwc.gov.au/documents/consolidated_awards/an/an160260/asframe.html)

<sup>9</sup> [http://www.airc.gov.au/consolidated\\_awards/ap/ap788783/asframe.html](http://www.airc.gov.au/consolidated_awards/ap/ap788783/asframe.html)

<sup>10</sup> [http://www.airc.gov.au/consolidated\\_awards/ap/ap825456/asframe.html](http://www.airc.gov.au/consolidated_awards/ap/ap825456/asframe.html)



