



National Research Centre  
Ground Floor, 133 Parramatta Road  
Granville NSW 2142  
T: (02) 8868 1500  
W: [www.amwu.org.au](http://www.amwu.org.au)

## **AM2019/17 Tranche 3 Exposure Drafts**

### **Introduction**

1. On 29 January 2020 a statement was issued advising of the publication of the exposure drafts in Tranche 3 and inviting commentary on the exposure drafts.<sup>1</sup>
2. On 29 January 2020 exposure drafts of the tranche 3 were published.
3. The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU) makes the following submissions in response to those directions.

### **Tranche 2 Awards**

4. The AMWU has an interest in the following awards:
  - a) Black Coal Mining Award
  - b) Food, Beverage and Tobacco Manufacturing Award
  - c) Miscellaneous Award 2010
  - d) Sugar industry award
  - e) Timber Industry Award.
5. The AMWU has not identified any issues nor has any comments in relation to the awards above, save for those listed below.

### ***AM2014/268 Food, Beverage and Tobacco Manufacturing Award 2010***

#### Annual Close Down

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<sup>1</sup> [ 2020] FWCFB 421

6. Clause 25.11 of the exposure draft provides for an employer to close down their enterprise or a part of it in certain circumstances. The clause as it currently appears in the exposure draft is:

*“Notwithstanding section 88 of the Act and clause 25.5, an employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that...”<sup>2</sup>*
7. It would appear that the reference to clause 25.5 is an error, and the reference should instead be to clause 25.7.
8. The AMWU notes that clause 25.5 with payment of annual leave by electronic funds transfer and clause 25.7 deals with excessive leave accruals.
9. Accordingly, the AMWU proposes that clause 25.11 of the exposure draft be amended as follows:

*“Notwithstanding section 88 of the Act and clause ~~25.5~~, 25.7 an employer may close down an enterprise or part of it for the purpose of allowing annual leave to all or the majority of the employees in the enterprise or part concerned, provided that...”*

### Casual Employees

10. Clause 10 of the Exposure Draft deals with casual employees and clauses 10.2 and 10.3 provides as follows:

*10.2 A casual employee working ordinary time must be paid:*

*(a) the ordinary hourly rate prescribed in clause 14—Minimum wages and classifications for the work being performed; plus*

*(b) a casual loading of 25% of the ordinary hourly rate.*

*10.3 The loading constitutes part of the casual employee’s all-purpose rate.”<sup>3</sup>*

11. The AMWU has two concerns with clause 10 as presently drafted.
  - a. Firstly, the clause does have an equivalent clause to clause 11.2(c) of the Manufacturing and Associated Industries and Occupations Award 2010 (**Manufacturing Award**) that clarifies that the rate resulting from the calculation required by 10.2 and 10.3 is the ‘casual ordinary hourly rate’.
  - b. Secondly, the clause does not clarify that where employees are entitled to a penalty rate or shift loading, that penalty or loading is to be calculated as a percentage of the casual ordinary hourly rate and not the ordinary hourly rate.

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<sup>2</sup> Exposure Draft – Food, Beverage and Tobacco Manufacturing Award 20XX dated 29 January 2020 clause 25.11.

<sup>3</sup> Exposure Draft – Food, Beverage and Tobacco Manufacturing Award 20XX dated 29 January 2020 clause 10.2 and 10.3.

12. To address these issues, the AMWU proposes that clause 10 of the exposure draft be amended consistent with the equivalent clause in the exposure draft for the Manufacturing Award<sup>4</sup> as follows:

*“10.1 A casual employee is one engaged and paid as a casual employee.*

*10.2 A casual employee working ordinary time must be paid:*

*(a) the ordinary hourly rate prescribed in clause 14—Minimum wages and classifications for the work being performed; plus*

*(b) a casual loading of 25% of the ordinary hourly rate.*

*10.3 The loading constitutes part of the casual employee’s all-purpose rate.”*

*10.4 The resulting rate is the **casual ordinary hourly rate.***

*10.5 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.*

and then renumber the remainder of clause 10.

13. In support of this proposed variation to the exposure draft, the AMWU relies on its submissions at paragraphs [17]-[24] of its submission in relation to the Manufacturing Award.<sup>5</sup>

### Schedule B.2 Casual Adult Employees

14. Schedule B sets out tables of rates that summarise the entitlements under the award. Clause B.2 deals specifically with casual rates. Clause B.2.1 provides:

*“Casual ordinary hourly rate means the hourly rate for a casual employee for the employee’s classification prescribed by this award, inclusive of the casual loading which is payable for all purposes. Where an additional allowance is payable for all purposes in accordance with clause 20.2(a), this forms part of the employee’s casual ordinary hourly rate and must be added to the casual ordinary hourly rate prior to calculating penalties and overtime.”<sup>6</sup>*

15. The difficulty with this is that the rates in schedule B.2.1 are better described as casual minimum hourly rates, owing to the fact that the rates don’t include any all-purpose allowances other than the casual loading.

16. The AMWU therefore proposes that clause B.2.1 be varied consistent with the equivalent clause in the current exposure draft for the Manufacturing Award (clause C.3.1 in schedule

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<sup>4</sup> Manufacturing Award Exposure Draft

<sup>5</sup> [Submission of the Australian Manufacturing Workers in Union in relation to tranche 2 Exposure Drafts dated 27 November 2019.](#)

<sup>6</sup> Exposure Draft – Food, Beverage and Tobacco Manufacturing Award 20XX dated 29 January 2020 Schedule B, clause B.2.1.

C) to ensure consistency between clause 10.2 and B.2.1 and also between the Manufacturing and Food Awards.

17. This would require an amendment to the exposure draft as follows:

~~*“Casual ordinary hourly rate means the hourly rate for a casual employee for the employee’s classification prescribed by this award, inclusive of the casual loading which is payable for all purposes. Where an additional allowance is payable for all purposes in accordance with clause 20.2(a), this forms part of the employee’s casual ordinary hourly rate and must be added to the casual ordinary hourly rate prior to calculating penalties and overtime.”*~~

*“Casual minimum hourly rate includes the casual loading which is payable for all purposes. Where an allowance is payable for all purposes in accordance with clause 30.2, this forms part of an employee’s casual ordinary hourly rate and must be added to the applicable permanent minimum hourly rate in B.2. prior to the application of the 25% casual loading to form the casual employee’s ordinary hourly rate. The casual ordinary hourly rate applies for all purposes and is used to calculate penalties and overtime.”*

18. It would also require all the references in B.2 to “casual ordinary hourly rate” to be changed to “casual minimum hourly rate”.

### ***AM2014/203 Graphic Arts, printing and Publishing Award 2010***

19. Clause 13.4 c(iii) of the exposure draft states:

“Where agreement is reached under clause 20.4 c (ii) to work ordinary hours on a Saturday or a Sunday, the following rates will be paid for all ordinary work done on Saturday or Sunday”

20. The reference to clause 20.4 c (ii) appears to be an error and should read 13.4 c (ii).

21. The clause 15.3 of the exposure refers to the “hourly rate.” This should be amended to read “ordinary hourly rate”

### ***AM 2014/237 Miscellaneous Award 2010***

22. The AMWU has reviewed the exposure draft for the Miscellaneous Award and has not identified any issues.

23. However, the AMWU notes that the Award may be affected by ongoing consideration of the coverage of the award by the Full Bench in AM2014/237, see 4 Yearly Review of Modern Awards – Miscellaneous Award 2010 [2020] FWCFB 754 [59]-[60].

**05 March 2020**