

IN THE FAIR WORK COMMISSION

Matter No.: AM2014/47 Annual Leave
Re Application by: "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)



Further Submissions 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 around 100,000 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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Background

1. In response to the schedule of draft determinations published on 26 May 2016, the AMWU provides the following submissions relating to the form and plain language re-draft of the draft determinations.

Excessive leave accruals

2. The AMWU has concerns relating to wording in cl. 1.7(b)(i) – Excessive leave accruals: direction by employer that leave be taken, and cl. 1.8(b)(ii) – Excessive leave accruals: request by employee for leave. The wording “when any other paid leave arrangements...are taken into account” might cause confusion as it does not specifically refer to paid *annual* leave entitlements.
3. It is clear that the clause is referring to any other annual leave arrangements made under cll. 41.6, 41.7 or 41.8, and the clause should state that it is these paid annual leave arrangements which are to be taken into account, rather than “paid leave arrangements”.
4. Reference to “paid leave arrangements” may lead parties into error by taking into account personal leave, long service leave and other paid leave arrangements.
5. It should also be noted that the term “paid annual leave” is used elsewhere in the determinations, rather than “paid leave”.
6. The AMWU would amend the clauses as follows:
 - **41.7(b)** However, a direction by the employer under paragraph (a):
 - (i) Is of no effect if it would result at any time in the employee’s remaining accrued entitlements to paid annual leave being less

than 6 weeks when any other paid annual leave arrangements (whether made under clause 41.6, 41.7, or 41.8 or otherwise agreed by the employer and employee) are taken into account; and

and

- **41.8(b)**

- (ii) The employee has not been given a direction under clause 41.7(a) that, when any other paid annual leave arrangements (whether made under clause 41.6, 41.7 or 41.8 or otherwise agreed by the employer and employee) are taken into account.

7. The AMWU would also amend cl. 41.8(c) to include the word “other” before “leave arrangement agreed by the employer and employee.”

- **Cl. 41.8(c)** A notice given by an employee under paragraph (a) must not:

- (iv) be inconsistent with any other leave arrangement agreed by the employer and employee.

Annual leave in advance

8. The AMWU notes the concerns raised by other Unions and the Australian Industry Group in their 2 June 2016 submission in relation to annual leave in advance. The draft wording in cl. 1.1(d) suggests that the employer may deduct “an amount equal to the amount already paid to the employee in respect of that annual leave taken”. This does not clarify sufficiently that the annual leave accrued after a period of annual leave in advance, is to be taken into account when deducting from wages on termination. The clause requires provision for the annual leave accrued by the employee, subsequent to the period of annual leave in advance.

9. Accordingly, the AMWU generally supports the wording proposed by the Australian Industry Group in paragraph [16] of their submission stating:

“If the employee’s employment is terminated before they have accrued all of the entitlement to paid annual leave which they have taken, then the employer may deduct an amount equal to the difference between the employee’s accrued annual leave entitlement and the leave taken in advance, from any monies due to the employee on termination.”

10. Clause 1.1(b) – Annual leave in advance should be amended to specify the exact date that the leave is to be taken. The wording in the draft determination is broad, and may give rise to imprecise approximations (i.e. “two weeks from now”, “next month” etc).

11. The AMWU would amend the clause as follows:

- **1.1(b)** And agreement must:
 - (i) state the amount of leave to be taken in advance and the date on which the leave is to be taken;

12. The AMWU’s proposed wording would be consistent with the wording proposed in the 2015 decision.¹

Cashing out of annual leave

13. The AMWU proposes a similar change as above to the cashing out of annual leave provision at cl. 1.1(d)(ii). The current wording is broad, and again allows for imprecise language, rather than the specification of a date.

14. The AMWU would amend the clause as follows:

¹ [2015] FWCFB 3406 at [412].

- **Cl. 1.1(d)** An agreement under clause 1.1 must state

(ii) the date on which the payment is to be made.

15. The AMWU's proposed wording would be consistent with that proposed in the 2015 decision.²

End

² [2015] FWCFB 3406 at [255].