

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

**AM2018/15 Airline Operations – Ground Staff Award 2010 –
Substantive Issues**

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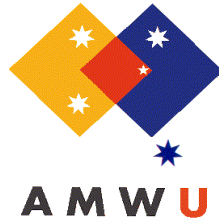
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Fair Work Act 2009

FAIR WORK COMMISSION

**AM2018/15 – Airline Operations – Ground Staff Award 2010 – Substantive
Issues**

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

Introduction

1. These submissions are made in support of the AMWU's application to vary the Airline Operations Ground Staff Award 2010 (**Airlines Award**) in accordance with the directions of Vice President Catanzariti as amended on 13 December 2018.¹
2. These submissions will:
 - a. Clarify the variation sought.
 - b. Outline the background to this matter.
 - c. Set out the relevant legislative provisions.
 - d. Identify a tension between two clauses in the Award.
 - e. Outline the source of the tension with reference to the award history.
 - f. Explain the necessity of the AMWU's proposed variation and how it is consistent with the modern award objective.
3. The AMWU supports the submissions of the other union parties in these proceedings.

Variation Sought

4. On 15 October 2018 the AMWU wrote to the Fair Work Commission (FWC) to confirm it intended on pursuing a variation to clause 23.1(a) of the *Exposure Draft – Airline Operations – Ground Staff Award 2016 (the Exposure Draft)*.²
5. Clause 23.1(a) of the Exposure Draft currently provides as follows:

“All work done outside ordinary hours on any day or shift (except where the time is worked by arrangement between the employees themselves) must be paid at 150% of the ordinary hourly rate for the first two hours and 200% of the ordinary hourly rate thereafter until the completion of the overtime work. For a continuous shiftworker the rate for working overtime is 200% of the ordinary hourly rate.”³

6. The Airline Operations Ground Staff Award 2010 (**Airline Operations Award**)

¹ [AM2018/15 Amended Directions of 13 December 2018.](#)

² [Correspondence from AMWU to Fair Work Commission of 15 October 2018.](#)

³ Clause 23.1(a) Exposure Draft – Airline Operations – Ground Staff Award 2016 (as at 23 March 2018).

currently provides for an overtime clause in substantively the same terms.⁴

7. The AMWU supports a variation to the Airlines Award in the same terms as the Draft Determination as filed by the Transport Workers Union (**TWU**) which is in substantively the same as the variation proposed by the AMWU on 15 October 2018. The TWU draft determination provides for an overtime clause as follows:

32.1 Payment for working overtime

(a) work done outside ordinary hours (except where the time is worked by arrangement between the employees themselves) must be paid at time and a half for the first two hours and double time thereafter until the completion of the overtime work.

(b) Shift work – All time worked in excess of or outside ordinary hours or on a shift other than a rostered shift must be paid double time.

(c) For the purposes of this clause, ordinary hours means the hours worked in an enterprise, fixed in accordance with clauses 28.2 and 28.3.

(d) The hourly rate, when computing overtime, is determined by dividing the appropriate weekly rate by 38, even in cases when an employee works more than 38 ordinary hours in a week.

(e) In computing overtime each day's work stands alone.

8. Reverting to an overtime clause as provided for in the draft determination provided by the TWU will provide for an overtime entitlement of double time for all shiftworkers regardless of whether they work a continuous or non-continuous shift roster.
9. This will:
 - a. Resolve a tension in relation to the operation of clauses 32.1 and 30.7 of the award;
 - b. Restore the overtime entitlement for non-continuous shiftworkers which was diminished without explanation during the award modernisation process; and

⁴ Airline Operations Ground Staff Award 2010 clause 32.1(a).

c. Resolve other technical inconsistencies in the award.

10. However, if the FWC is not minded vary the award in accordance with this primary position, the AMWU submits as an alternative position, that clause 30 – Special provisions for shiftworkers should be varied to insert a new subclause 30.8 as follows:

30.8 The rate at which a shiftworker must be paid for all time worked on Sundays and public holidays is double time and on Christmas Day and Good Friday is double time and a half.

Background and Procedural History

11. The issue of the proper overtime rate for non-continuous shiftworkers in the Airlines Award has some procedural history.

12. The issue was first identified by the Australian Workers' Union (**AWU**) in their submission of 30 June 2016 where they submitted that:

"We don't agree that the rate payable for overtime by shiftworkers on Sunday is 150% for 2 hours and then 200%. We interpret clause 17.7 (a) to mean that all overtime by shiftworkers on Sunday is paid at the rate of 200%. It would be absurd for the Exposure Draft to prescribe a rate of 200% for all work by day workers on Sunday, 200% for ordinary hours by shift workers on Sunday and 200% for all overtime by continuous shiftworkers but then a lower rate for overtime by non-continuous shiftworkers on Sunday."⁵

13. The AMWU supported this submission.⁶

14. In a reply submission Qantas Group submitted that the rate for non-continuous shiftworkers working overtime for the first two hours was 150% including on a Sunday.⁷

15. In a Conference before Vice President Catanzariti on 2 February 2019, Qantas submitted that the issue was a substantive matter. Vice President Catanzariti agreed with this submission, and the matter was referred as a substantive issue.⁸

16. On 1 November 2017, in submissions in response to the draft report to the Group 4

⁵ [submission of the Australian Workers Union 30 June 2016](#) [25].

⁶ [Submission in reply of the AMWU 21 July 2016](#) [25-29].

⁷ Submission in Reply filed on behalf of Qantas on 21 July 2016 [29].

⁸ [Transcript of Proceedings 2 February 2017](#) [PN549-PN561].

Full Bench, the AMWU submitted that the matter could be dealt with as part of the technical and drafting process.⁹

17. On 21 March 2018, the Group 4 Full Bench issued their decision with respect to the technical and drafting matters. In that Decision it was confirmed that the matter was going to be dealt with as a substantive issue.¹⁰

18. In a submission dated 18 April 2018, the AMWU submitted that:

- a. The matter concerned a drafting issue, relating to summarizing the wage and penalty rates into a concise schedule; and that accordingly
- b. The issue was amenable to resolution via the technical and drafting process.¹¹

19. The AMWU raised a further matter, which was that in the pre-reform awards, there was no distinction at all between continuous and non-continuous shiftworkers, that the overtime entitlement in the Modern Award should return to this position, and that the AMWU intended on addressing this as part of the substantive issues process if necessary.¹²

20. On 7 August 2018, the Group 4 Full Bench issued their further decision in relation to the technical and drafting matters in the Group 4 awards.¹³ In that Decision, the Full Bench confirmed that in light of the issue that the AMWU and other union parties was pressing (in relation to the removal of the word “continuous”) the whole of the matter (inclusive of the proper rate for overtime work performed by non-continuous shiftworkers on a Sunday) would be dealt with as a substantive matter.¹⁴

Relevant Legislative Provisions

21. Section 156 of the Fair Work Act (**the Act**) requires the Fair Work Commission (**FWC**) to conduct a 4-yearly review of modern awards.¹⁵

22. Section 156(2) provides that in the 4-yearly review, the FWC must review all modern awards; and may vary, make or revoke a modern award. ¹⁶

⁹ [Submission of AMWU in response to Draft Report to the Full Bench of 1 November 2017.](#)

¹⁰ 4 yearly review of modern awards—Award stage—Group 4 awards [2018] FWCFB 1548 [114].

¹¹ [AMWU Submission of 19 April 2018](#) [17]-[22].

¹² Ibid [26]-[31].

¹³ 4 yearly review of modern awards—Award stage—Group 4 awards [2018] FWCFB 4175.

¹⁴ Ibid [74].

¹⁵ Fair Work Act 2009 s.156(1).

¹⁶ Ibid s.156(2).

23. The Fair Work Commission (**FWC**) has broad discretion under s.156 of the *Fair Work Act 2009* (**the Act**) as to the conduct of the four yearly reviews of the modern awards.

24. Section 134(1) provides that:

“the FWC must ensure that the modern awards, together with National Employment Standards (NES) provide a fair and relevant minimum safety net of terms and conditions, taking into account:

- (a) *relative living standards and the needs of the low paid; and*
- (b) *the need to encourage collective bargaining; and*
- (c) *the need to promote social inclusion through increased workforce participation; and*
- (d) *the need to promote flexible modern work practices and the efficient and productive performance of work; and*
- (da) *the need to provide additional remuneration for:*
 - (i) *employees working overtime; or*
 - (ii) *employees working unsocial, irregular or unpredictable hours; or*
 - (iii) *employees working on weekends or public holidays; or*
 - (iv) *employees working shifts; and*
- (e) *the principle of equal remuneration for work of equal or comparable value; and*
- (f) *the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and*
- (g) *the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and*
- (h) *the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy”¹⁷*

25. This is the Modern awards objective. Section 134(2) states that the modern award objective applies to the performance or exercise of the FWC’s modern award powers which, relevantly for present purposes, include the FWC’s power to vary a modern award.¹⁸

26. In *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues*¹⁹ (**the Preliminary Jurisdictional Decision**) a Full Bench of the Fair Work Commission considered the relevant legislative provisions and summarised the jurisdictional parameters of the review which can be summarised as follows:

¹⁷ Ibid s.134(1).

¹⁸ Ibid s.134(2).

¹⁹ *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788.

- A party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation. The extent of that argument will depend on the circumstances.
- The Commission will have regard to the historical context applicable to each modern award.
- In the review the Commission will proceed on the basis that prima facie, the modern award being reviewed the modern award objective at the time it was made.
- In conducting the Review, it is appropriate that the Commission take into account previous decisions relevant to any contested issue.²⁰

Tension between clauses 32.1 and 30.7

27. The Airline Award is currently not “*simple and easy to understand*”²¹ award due to a tension between clauses 32.1 and 30.7, which is causing uncertainty in relation to the entitlements for non-continuous shiftworkers.

28. Clause 32.1(a) sets out the penalty rate for overtime worked and provides:

*“All work done outside ordinary hours on any day or shift (except where the time is worked by arrangement between the employees themselves) must be paid at time and a half for the first two hours and double time thereafter until the completion of the overtime work. For a continuous shiftworker the rate for working overtime is double time.”*²²

29. The Exposure Draft provides for an overtime entitlement in substantially the same terms except that the references to ‘time and a half’ and ‘double time’ have been replaced with references to 150% and 200% respectively.

30. It can be seen from the terms of clause 32.1, that the rate for working overtime is time and a half for the first two hours and double time thereafter, except for continuous shiftworkers, for whom the rate is double time, immediately upon the commencement of the overtime.

²⁰ Ibid [60].

²¹ Fair Work Act 2009 s.134(1)(g).

²² Airline Operations Ground Staff Award Clause 32.1(a).

31. "Continuous shiftworker" is not defined in the Award. However continuous shiftwork is defined by clause 28.3 as:

*"work carried on with consecutive shifts of employees throughout the 24 hours of each of at least six consecutive days without interruption except for breakdowns or meal breaks or due to unavoidable causes beyond the control of the employer."*²³

32. By combined operation of clauses 32.1(a) and 28.3 any shiftworker that works a roster that operates for example for 16 hours a day (i.e. with a day and afternoon shift); or indeed any roster that otherwise fails to conform with the description of continuous shiftworker, would prima facie, be entitled to a penalty rate for overtime worked of time and a half for the first two hours and double time thereafter.

33. Clause 30.7 of the Award provides as follows:

"(a) Shiftworkers must be paid the following penalty rates for work on weekends and public holidays:

<i>Shift Type</i>	<i>Penalty Rate</i>
<i>Saturday</i>	<i>Time and a half</i>
<i>Sunday</i>	<i>Double time</i>
<i>Public Holidays</i>	<i>Double time</i>
<i>Christmas Day and Good Friday</i>	<i>Double time and a half</i>

34. Clause 17.7 of the Exposure Draft provides for an entitlement in substantively the same terms as 30.7(a) except that, similarly to clause 23.1(a), the references to time and a half, double time and double time and a half have been replaced with references to percentages (150%, 200% and 250% respectively).²⁴

35. It is not entirely clear on the terms of the award, whether clause 30.7 or clause 32.1 applies to overtime work performed on Sunday. The AMWU submits, consistent with

²³ Ibid Clause 28.3(a).

²⁴ Exposure Draft – Airline Operations Ground Staff Award 2016 clause 17.7.

previous submissions, that clause 30.7 should apply, because:

- a. Applying clause 31.2 results in absurd outcomes with respect to non-continuous shiftworkers; and
- b. Clause 30.7 applies to “work” performed. While it does not expressly apply to “all work,” the application of the provision is not limited to ordinary hours. In the circumstances there is no reason to construe the provision narrowly.

36. An examination of the entitlements in the pre-reform awards reveals that the cause of the tension between clauses 32.1 and 30.7 is an inadvertent insertion of a distinction between continuous and non-continuous shiftworkers in the Modern Award, in circumstances where there was no history of such a distinction between different categories of shiftworkers. This is explored in further detail below.

History of the Overtime Clause in the Airline Operations – Ground Staff Award

37. The pre-reform awards identified as informing the provisions of the modern award are as follows:

- Aircraft Engineers (General Aviation) Award 1999.
- Airline Operations - Clerical and Administrative Award 1999.
- Airline Operations (Domestic Airlines) Award 2000.
- Overseas Airlines (Interim) Award 1999.
- Airline Operations (Transport Workers') Award 1998.

38. It is significant that none of the above awards contained a distinction between continuous and non-continuous shiftworkers, much less a distinction for the purposes of overtime remuneration. Under these Awards, all overtime for all shiftworkers was payable at the rate of double time. A table summarising the overtime entitlements in these pre-reform awards is attached to these submissions and marked “**AMWU-1.**”

39. An analysis of the various drafts that were put forward by the parties during the Part 10A Award Modernisation proceedings indicate that the form of words was inserted into the drafts which hadn’t previously subsisted in the drafts.

40. The joint draft put forward by Qantas and the Ai Group on 6 March 2009 provided for

an overtime clause as follows:

“25.2 Payment for working overtime

(a) Day work - All work done outside ordinary hours must be paid for at the rate of time and a half for the first two hours and double time thereafter.

(b) Shift work - All time worked in excess of or outside ordinary hours or on a shift other than a rostered shift must be paid for at the rate of double time unless the time is worked by arrangement between the employees themselves.

(c) Except as provided in clause 25.3 and 25.4, in computing overtime, each day's work stands alone.”²⁵

41. As can be seen from the Qantas/Ai Group joint draft, there was no distinction between the penalty rate between shift workers.

42. The first draft to include an overtime clause that made a distinction between the overtime penalty rate for continuous shift workers and non-continuous shift workers was the draft award submitted by the Australian Council of Trade Unions (**ACTU**).

43. The ACTU draft included an overtime clause as follows:

38.1 Payment for working overtime

(a) All work done outside ordinary hours on any day or shift must be paid at time and a half for the first two hours and double time thereafter until the completion of the overtime work. For a continuous shift worker the rate for working overtime is double time.²⁶

44. It is unlikely that the ACTU would have intentionally reduced the overtime entitlement for non-continuous shift workers.

45. In submissions filed on 1 April 2009, Qantas indicate their support for the ACTU's draft overtime clause.²⁷ The ACTU overtime clause is then included in a new Qantas/Ai Group joint draft also filed on 1 April 2009.²⁸

²⁵ [Qantas Group and Ai Group Draft \(6 March 2009\) Airline Operations and General Aviation Industry – Ground Operations Award 2010](#) clause 25.2.

²⁶ [Aviation Industry Award \(Draft\) Submitted by the Australian Council of Trade Unions 18 March 2009](#) clause 38.1.

²⁷ [Further Submissions by the Qantas Group in Reply Draft Ground Operations Award 1 April 2009](#) Attachment 1 page 38.

²⁸ [Qantas Group and Ai Group Draft \(1 April 2009\) Airline Operations and General Aviation Industry – Ground Operations Award 2010](#) clause 26.2.

46. The first exposure draft published on 22 May 2009 incorporated the overtime clause as provided for in the Qantas/Ai Group joint draft of 1 April 2009.²⁹ The overtime clause in all subsequent exposure drafts was in the same terms as is currently provided for in the current Airline Award.

47. In the Decision making the Airline Operations – Ground Staff Award, the issue of overtime rates is not addressed.³⁰

48. Relevantly, there does not appear to have been any substantive consideration of the overtime penalty rate for non-continuous shift-workers.

49. Thus, the Award history reveals that:

- In this industry, the distinction for penalty rates is between day workers and shift workers;
- All shiftworkers have traditionally received double time for all overtime worked; and
- The diminution of the overtime entitlement for non-continuous shiftworkers appears to have transpired accidentally.

Necessity of AMWU's Claim

50. It is submitted that the Airline Award is not currently meeting the modern award objective. This is because the accidental insertion of a distinction between continuous and non-continuous shiftwork for the purposes of overtime penalty rates (as described in paragraphs [36] to [47] above), has caused several technical anomalies in the Airlines Award.

51. The most notable of these anomalies is that the Award is now being interpreted to merely provide an entitlement for non-continuous shiftworkers of time and a half for the first two hours of overtime worked on a Sunday. This can be seen from the tables at B.2.4, B.3.4, B.4.4 and B.5.4 of the Exposure Draft which provide as follows:

²⁹ Exposure Draft (May 2009): Airline Operations – Ground Staff Award Title 2010 clause 30.1(a).

³⁰ *Re Award Modernisation* [2009] AIRCFB 826 [8].

	Day workers			Shiftworkers (except continuous shiftworkers)		Continuous shiftworkers
	Monday to Saturday		Sunday	Monday to Sunday		Monday to Sunday
	First 2 hours	After 2 Hours	All hours	First 2 hours	After 2 Hours	All overtime hours
	% of ordinary hourly rate					
	150%	200%	200%	150%	200%	200%
	\$	\$	\$	\$	\$	\$

52. It is apparent that in compiling the various award entitlements into the tables at Schedule B of the Exposure Draft, priority of operation has been given to clause 32.1(a) over clause 30.7 for non-continuous shiftworkers.

53. The approach is consistent with the pre-reform awards. For example, the *Aircraft Engineers (General Aviation) Award* provided as follows:

“17.5 Shift workers will be paid the following shift loadings:

17.5.1 All shifts worked on Saturday - time and a half

17.5.2 All shifts worked on Sunday - double time

17.5.3 All shifts worked on public holidays as defined in this award (with the exception of Christmas Day (25 December) and Good Friday) - double time

17.5.4 All shifts worked on Christmas Day (25 December) and Good Friday - double time and a half³¹

54. In the case of the *Aircraft Engineers (General Aviation) Award* there was no ambiguity because the shift penalty clause (clause 17.5 above) only applied in respect of “shifts” with the overtime clause applying in respect to all work outside of shifts.³²

55. This clause interacted with the overtime clause without difficulty, because that award provided for an overtime entitlement of double time for all overtime for all shiftworkers. Thus, under the terms of the *Aircraft Engineers Award 1999*:

³¹ AP765552 - Aircraft Engineers (General Aviation) Award 1999 Clause 17.5.

³² Ibid 18.3.

- a. If a shiftworker worked a rostered shift on a Saturday, they would be entitled to time and a half.³³
- b. If a shiftworker worked a rostered shift on a Sunday, they would be entitled to double time.³⁴
- c. If a shiftworker worked overtime on a Saturday, they would be entitled to double time, representing a 50% increase on their ordinary hours.³⁵
- d. If a shiftworker worked overtime on a Sunday, they would continue to receive double time for all hours worked.³⁶

56. Furthermore, under the terms of the pre-modern award, there was a clarification that the penalty rate for all work performed on Christmas Day and Good Friday was double time and a half.³⁷

57. Thus, shiftworkers were not disadvantaged by the interaction of the overtime and weekend penalty rate clauses.

58. However, the modern Airlines Award:

- a. Contains a distinction between continuous and non-continuous shiftwork for the purposes of overtime penalties;³⁸
- b. Provides clarification that the Sunday penalty payable for overtime for day workers is double time for all time worked but failed to do the same for non-continuous shiftworkers;³⁹ but
- c. Provides for shift penalties payable for “work” performed on certain days.⁴⁰

59. Under the terms of the Airlines Award, to give priority of operation to clause 32.1(a) over clause 30.7 (the approach advocated by Qantas and provided for in the Exposure Draft) would result in the following outcomes:

- a. If a non-continuous shiftworker works a rostered shift on a Saturday, they are

³³ Ibid Clause 17.5.1.

³⁴ Ibid Clause 17.5.2

³⁵ Ibid Clause 18.3.

³⁶ Ibid.

³⁷ Ibid Clause 19.8.

³⁸ Airline Operations Ground Staff Award Clause 32.1(a).

³⁹ Ibid Clause 33.2.

⁴⁰ Ibid Clause 30.7.

entitled to a penalty rate of time and a half.

- b. If a non-continuous shiftworker works a rostered shift on a Sunday, they are entitled to a penalty rate of double time.
- c. If a non-continuous shiftworker works overtime on a Saturday, they are entitled to 150% for the first two hours, representing no increase compared with their ordinary hours; and
- d. If a non-continuous shiftworker works overtime on a Sunday, they would only be entitled to 150% for the first two hours, representing a 50% **decrease** on their ordinary hours.

60. It is submitted that the above is an absurd interpretation, and if correct (it is not conceded that it is correct) would be totally inconsistent with the concept of a fair and relevant safety net.

61. Under this interpretation, non-continuous shiftworkers would have a less beneficial entitlement compared with both continuous shiftworkers and day workers, because:

- a. Continuous shiftworkers receive a penalty of double time for all overtime, virtue of clause 32.1(a); and
- b. Day workers receive double time for all time worked on Sunday virtue of clause 33.2.

62. The AMWU maintains that on a proper construction of clause 30.1, the entitlement for all shiftworkers on a Sunday is double time regardless of whether the work is constituted by overtime or ordinary hours. This is so because unlike clause 17.5 of the *Aircraft Engineers (General Aviation) Award* which only applied in respect of “shifts” clause 30.7 does not limit the application of the penalty rate to ordinary hours. Instead it applies to “work.”

63. Therefore, to restrict the application of 30.7(a) to ordinary hours only would be to impermissibly read words into the award that aren't there.

64. However, if the Exposure Draft remains as it is now, many employers will no doubt use the schedule of wage rates to identify the relevant penalty rate. This means that if the Award is not varied in accordance with the AMWU's proposal, non-continuous

shiftworkers are at risk of receiving a lesser entitlement compared with both continuous shiftworkers and day workers.

65. To avoid this outcome, the AMWU submits that:

- a. The Award should be varied in accordance with the AMWU's primary position to bring the entitlement for non-continuous shiftworkers in accordance with the entitlement for continuous shiftworkers; or in the alternative
- b. The Award should be varied in accordance with the AMWU's alternative proposal to clarify that the penalty rate for all hours worked on a Sunday is double time.

66. It is submitted that the AMWU's primary position should be preferred because:

- a. That position is consistent with the award history;
- b. There was no apparent justification or merit case advanced for the diminution of the overtime entitlement for non-continuous shiftworkers when the modern award was made; and
- c. Award modernisation was not intended to diminish employee entitlements.⁴¹

The Modern Awards Objective

67. Because of the technical anomalies identified above, the AMWU submits that the Airlines Award is not achieving the modern award objective.

68. Considering clauses 32.1 and 30.7 remain unaltered compared with when the Award was made it follows that the Airlines Award was not achieving the modern award objective at the time it was made.

69. Thus, it is submitted that in the present circumstances, the presumption that this award was meeting the modern award objective at the time it was made⁴² is displaced.

70. On this basis, the AMWU submits that its proposed variation is necessary to achieve the modern award objective, in particular to ensure that:

- a. The Award is simple and easy to understand (s.134(1)(g));

⁴¹ Ministers Request Under Section 576C(1) – Award Modernisation Consolidated Version, Page 1.

⁴² *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788.

- b. Is providing additional remuneration for employees working overtime (s.134)(1)(da).

71. Thus, the AMWU submits that it is incumbent on the FWC to resolve the issues in the award, and that this can be achieved most conveniently by adopting the AMWU's proposed variation.

72. Each of the s.134(1)(a) requirements will now be considered.

Relative Living Standards and the Needs of the Low Paid

73. It is submitted that this consideration is neutral. It is unlikely that the AMWU's proposed variation would have any significant impact on living standards.

The Need to Encourage Collective Bargaining

74. It is unlikely that the AMWU's proposal would have any significant impact on the need to encourage collective bargaining.

75. Therefore, it is submitted that this consideration is neutral.

The Need to promote social inclusion through increased workforce participation

76. It is submitted that the AMWU's proposed variation is unlikely to have any effect on workforce participation.

77. Thus, it is submitted that this consideration is neutral.

The need to promote flexible modern work practices and the efficient and productive performance of work

78. It is submitted that the AMWU's proposed variation is unlikely to either promote or suppress efficient work practices.

79. Thus, it is submitted that this consideration is neutral.

The need to provide additional remuneration

80. The AMWU submits that the AMWU's proposed variation is necessary to ensure that additional remuneration is provided for employees working overtime.

81. As identified in paragraphs [52] to [65], the Award is currently being interpreted in such a way that would cause a non-continuous shiftworker to receive less

remuneration for overtime worked on a Sunday compared with ordinary hours.

82. While it is not conceded that this is the proper construction of the Airlines Award, it is submitted that even if this *was* the proper construction of the award, it would self-evidently be inconsistent with the concept of a fair and relevant safety net, and in particular, the requirement to provide additional remuneration to employees working overtime.

The principle of equal remuneration for work of equal or comparable value

83. It is submitted that this consideration is neutral.

The likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden.

84. It is submitted that the impact on business is likely to minimal.

85. This Airlines Award covers an industry which is dominated by Enterprise Agreement coverage. Many enterprise Agreements contain an overtime entitlement consistent with the AMWU's proposed variation.

86. Two significant Enterprise Agreements that the AMWU is a party to in this industry are the:

- Qantas Airways Limited (AWU, AMWU, CEPU) Enterprise Agreement 10; and
the
- Qantas Airways Limited (AWU, AMWU, CEPU) Brisbane Base Maintenance Agreement 4.

87. These Agreements both provide for an entitlement of double time for all overtime for all shiftworkers.

The need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards

88. The Airlines Award is not currently this objective. This is self-evident, considering the varying interpretations of the parties, and the way the entitlement is represented in the tables of wage rates in schedule B of the Exposure Draft.

89. The AMWU's proposed amendment would provide for a clear and unambiguous

entitlement of time and a half for the first two hours for all day workers, and an entitlement of double time for all shiftworkers, regardless of whether such shiftworkers are continuous or non-continuous shiftworkers.

90. Removing this artificial distinction between continuous and non-continuous shiftwork will make the award far easier to understand.

The likely impact of any exercise on employment growth, inflation, and the sustainability, performance and competitiveness of the national economy

91. It is submitted that this consideration is neutral.

Conclusion

92. In conclusion:

- a. The AMWU has identified problems with the operation of the Airlines Award.
- b. These problems can be resolved by adopting the AMWU's proposed variation.
- c. The AMWU's proposed variation is consistent with the modern awards objective and the award history.

93. For the foregoing reasons, the AMWU submits that its proposed variation should be accepted.

94. If the FWC is not prepared to vary the Award in the terms sought, the AMWU submits that its alternative proposal be accepted, and the tables at B.2.4, B.3.4, B.4.4 and B.5.4 of the Exposure Draft be amended accordingly.

END

AMWU-1

Pre-reform awards

Award Title	Overtime Clause
Aircraft Engineers (General Aviation) Award 1999	<p>18.3 Shift workers</p> <p>For all time worked outside ordinary hours the overtime rate of pay will be double time.</p>
Airline Operations – Clerical and Administrative Award 1999	<p>25.1.2 Shift work</p> <p>For all time worked</p> <ul style="list-style-type: none"> • in excess of or outside ordinary hours; or • on a shift other than a rostered shift; or • where the employee has worked more than six consecutive shifts in any seven consecutive days; or • where the employee has worked more than ten shifts in any fourteen consecutive days; <p>the employee must be paid for at the rate of double time unless the time is worked by arrangement between the employees themselves.</p>
Airline Operations (Domestic Airlines) Award 2000	<p>29.1.2 Shift work: All time worked in excess of or outside ordinary hours or on a shift other than a rostered shift must be paid for at the rate of double time.</p>
Airline Operations (Transport Workers’) Award 1998	<p>28.2.2 Shift work - All time worked in excess of or outside ordinary hours or on a shift other than a rostered shift must be paid for at the rate of double time.</p>
Overseas Airlines (Interim) Award 1999	<p>21.1.2 Shiftworkers</p> <p>All time worked in excess of or outside the ordinary working hours prescribed by clause 19 - Hours of Work, or on a shift other than a rostered shift, will be paid at the rate of double time except when the time is worked for the purpose of effecting the customary rotation of shifts.</p>