

Fair Work Commission  
Terrace Tower, 80 William Street  
East Sydney NSW 2011  
By email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

4 December 2015

## **Re: AM2014/79 AWU reply submissions on the Exposure Draft for the Mining Industry Award 2015**

### **Background**

1. These submissions follow the 4 Yearly Review of Modern Awards Full Bench's Decision on 23 October 2015 regarding Group 1C, 1D and 1E awards.
2. This Decision directed parties to file reply material on the revised Exposure Drafts by 4:00pm on 4 December 2015.
3. The Australian Workers' Union's submissions in relation to the Exposure Draft for the *Mining Industry Award 2015* (Exposure Draft) as republished on 2 November 2015 appear below.

### **Australian Mines and Metals Association (AMMA)**

4. Clause 6.5: The Full Bench has already determined to delete a probationary period clause in the *Rail Industry Award 2010*<sup>1</sup>. The conclusion that the clause serves no practical purpose appears equally applicable for this award. Hence clause 6.5 of the Exposure Draft should be deleted.
5. Clause 13.1 and Schedule H: We have previously agreed that reference to afternoon shift should be deleted from the definition of permanent night shift as there is no additional payment to an employee on permanent afternoon shift under this award.

### **Business SA**

6. We agree with the amendments proposed by Business SA.

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<sup>1</sup> *4 yearly review of modern awards* [2015] FWCFB 7236 at [245]

## Australian Industry Group (AIG)

7. Clause 14: We agree reference should be inserted to the percentage being applied to the “ordinary hourly rate”.
8. Clause 20.2: We agree this typo should be corrected.
9. Schedule B.3: AIG’s submission is clearly wrong and should be rejected. Clause 6.4 (d) of the Exposure Draft states the casual loading forms part of the all purpose rate. This is consistent with clause 10.3 (b) of the current award.
10. It is inconceivable that the casual loading would not be included in penalty rate and overtime calculations when it is specifically required to be part of the “all purpose rate”. The precise purpose of those words is to require the casual loading to be included when overtime and penalty rates calculations are undertaken.
11. We note the Full Bench has recently rejected a similarly pedantic argument from AIG in relation to the *Manufacturing and Associated Industries and Occupations Award 2010*.<sup>2</sup>
12. The obvious flaw in AIG’s argument is that it would result in a casual employee working on night shift only receiving a 15% loading whilst a casual employee on day work would receive a 25% loading.
13. This would occur because according to AIG the night shift loading of 15% in clause 26.5 (a) is “in substitution of any other loadings or penalty rates”. Hence the 15% night shift loading would be in substitution of the 25% casual loading that would otherwise apply.
14. This outcome is manifestly absurd and could not have been intended.



Stephen Crawford  
**SENIOR NATIONAL LEGAL OFFICER**

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<sup>2</sup> 4 yearly review of modern awards [2015] FWCFB 7236 at [88]