



# REPORT

*Fair Work Act 2009*

s.156 – 4 yearly review of modern awards

## **4 yearly review of modern awards–Award stage–Group 2 awards– Technical and Drafting Issues (AM2014/203)**

### **GRAPHIC ARTS AWARD 2010 [MA000026]**

JUSTICE ROSS, PRESIDENT

MELBOURNE, 24 DECEMBER 2018

*4 yearly review of modern awards – award stage – group 2 awards – technical and drafting issues – Graphic Arts Award 2010.*

[1] This report deals with the outcome of a conference held on Thursday 20 December 2018 to deal with outstanding technical and drafting issues in the *Graphic Arts Award 2010*. A transcript of the [conference](#) is available on the Commission’s website.

[2] The following parties were represented at the conference:

- Australian Industry Group (Ai Group)
- Australian Manufacturing Workers’ Union (AMWU)

[3] At the conference two outstanding issues were discussed relating to the definition of ordinary hourly rate and the terminology regarding ‘time and a half’ ‘double time’ and ‘double time and a half’ within the Exposure draft. The background to the issues is set out in the Full Bench decision issued on 23 November 2018<sup>1</sup> (the *November 2018 decision*). Following the *November 2018 decision* interested parties were provided an opportunity to comment on a detailed submission that had previously been filed by Ai Group. Ai Group were also provided a further opportunity to file a written submission outlining new wording for certain clauses within the exposure draft.

[4] Prior to the conference Ai Group and the AMWU filed written submissions.<sup>2</sup> In its submission the AMWU also sought leave to raise an additional issue relating to a definition for ‘casual ordinary hourly rate’.

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<sup>1</sup> [\[2018\] FWCFB 7210](#) at [3] – [15]

<sup>2</sup> Ai Group [submission](#), 10 December 2018 and AMWU [submission](#), 13 December 2018

[5] At the conference the AMWU advised that it agreed with the proposed wording to the following clauses in the exposure draft that are outlined in Ai Group's submission of 10 December 2018<sup>3</sup>:

- Schedule I.1.1
- 18.5
- 24.2(b)
- 24.3(a)
- 24.3(b)
- 24.4
- 31.3
- 31.4<sup>4</sup>

[6] The AMWU raised an issue with the proposed removal of clause 21.3(c). The AMWU submits this clause should be retained as it states the shift allowance is part of the employees' weekly wage for the purpose of calculating overtime rates, and therefore the clause still has word to do within the exposure draft.<sup>5</sup> Ai Group submit that 21.3(c) be removed as the proposed definition for the overtime hourly rate 'is intended to ensure that the relevant shift allowance is payable where an employee works overtime and then the overtime rate is compounded on that'<sup>6</sup>.

[7] The parties agreed to engage in further discussions around adding additional wording to the proposed definition of 'overtime hourly rate' to alleviate concerns raised by deleting clause 21.3(c) of the exposure draft. A short written submission is to be filed by no later than **4.00 pm on Friday 18 January 2018**.

[8] In the *November 2018 decision* the Commission outlined a preliminary view that all instances of the phrase 'hourly rate' would be changed to 'ordinary hourly rate' and the following definition would be inserted into the exposure draft:

'**ordinary hourly rate** means the hourly rate for the employee's classification specified in clause 8.2, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes.'

[9] The AMWU agreed with the Commission's proposed definition, however requested the following underlined amendments:

'**ordinary hourly rate** means the hourly rate for the employee's classification specified in clause 8.2, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes. Where the employee is employed on shift work the penalty payable for the work at such hours will be part of the ordinary hourly rate.'

[10] Ai Group opposed the AMWU's amendment and also sought to have the words 'in clause 8.2' replaced with the words 'under this award.' Discussion around this issue occurred during the conference and parties agreed to engage in further discussions regarding the

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<sup>3</sup> Ai Group [submission](#), 10 December 2018 at 5

<sup>4</sup> Ai Group highlighted a typographical error in relation to the proposed wording for clause 31.4. The proposed wording in both instances should say '200 per cent' not '250 per cent'.

<sup>5</sup> [Transcript](#), 20 December 2018 at PN17

<sup>6</sup> [Transcript](#), 20 December 2018 at PN22

wording of the definition and file a short written submission by no later than **4.00 pm on Friday 18 January 2018**.

*Insertion of casual ordinary hourly rate*

[11] The AMWU sought leave to raise an additional regarding the insertion of a definition for ‘casual ordinary hourly rate’ submitting that the current drafting of the exposure draft isn’t clear enough that the casual loading is to be calculated on the ordinary hourly rate, not the minimum rate.<sup>7</sup>

[12] The AMWU propose inserting the following as a definition:

“casual ordinary hourly rate means the hourly rate for a casual employee for the employee’s classification specified in clause 8- wage rate and classification structure, inclusive of the casual loading. Where an employee is entitled to any allowances specified as being included in the employee’s ordinary rate or payable for all purposes, this will form part of the of that employee’s casual ordinary hourly rate.”<sup>8</sup>

[13] This issue was discussed at the conference and Ai Group outlined the position that the general definition isn’t necessary, particularly because the term is not used throughout the Exposure Draft. The parties agreed to undertake further discussions regarding any specific provisions of the exposure draft where there may be a concern in relation to how the casual loading is to be calculated.

PRESIDENT

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<sup>7</sup> AMWU [submission](#), 13 December 2018 at paras 15 – 16

<sup>8</sup> AMWU [submission](#), 13 December 2018 at 17