

## IN THE FAIR WORK COMMISSION

**Matter No.:** AM2014/203 Graphic Arts, Printing and Publishing Award 2010

**Re Application by:** "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)



### Graphic Arts, Printing and Publishing Award 2010 Exposure Draft

#### 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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## **1. Background**

1.1 The AMWU notes that most technical and drafting matters relating to the *Graphic Arts, Printing and Publishing Award 2010* (the Award) have been resolved. The following issues remain outstanding:

- **Item 92:** Time provision for refreshment
- **Item 93:** Hours of work – regional daily newspaper office – weekend rates
- **Item 94:** Trainees – Training allowance
- **Item 95:** Competencies
- **Item 96:** Payment of wages on termination
- **Item 97:** Coverage of daily metropolitan newspapers
- **Item 100:** Penalty rates – Weekend work – Regional daily newspaper rates

1.2 The AMWU has held discussions with representatives from Fairfax, Western Australians Newspapers and Colourpress. The AMWU remains of the view the daily metropolitan newspapers are not covered under the coverage of the current Award, and that substantive changes will need to be made to facilitate their integration, along with amendments to hours of work provisions. The parties have been unable to reach agreement and further direction will be required.

1.3 Finally, it should be noted that the following does not reflect the final submissions of the AMWU, as the parties have not yet had occasion to submit comprehensive written submissions in support, or in reply to such substantive claims. It is anticipated that such substantive matters will be the subject of a Full Bench hearing, with directions issued accordingly.

## **2. Outstanding matters**

## **Item 92: Time provision for refreshment**

2.1 The AMWU maintains that the wording “without loss of pay” should be inserted into cl. 23.1 after the words “pause to acquire a refreshment”. This means that the clause would read

“A reasonable opportunity is to be provided by the employer for each employee to pause to acquire a refreshment without loss of pay during the first half of the day or shift, at a time specified by the employer”

2.2 The inclusion does no damage to the meaning of the clause. It only serves to remove any ambiguity, and to more prominently advertise that the ‘pause’ is counted as paid time worked. It further serves to distinguish this entitlement from unpaid meal breaks.

2.3 The historical position of the clause is clear that it is intended to operate as a paid pause. However, the historical position may not be easily or immediately apparent to employers or employees, as the word ‘pause’ does not itself indicate that payment must continue. The Award Simplification case *Graphic Arts – General – Interim Award 1995* demonstrates that the equivalent clause prior to the adoption of the current wording in the *Graphic Arts – General – Award 2000* was cl. 6.3.1.<sup>1</sup> It stated:

“6.3.1 Rest intervals

6.3.1(a) For each female employed on day work or on shift work there shall be an interval of ten minutes at a time fixed by the employer between the second and third hour after the employee's ordinary commencing time for rest on each day on which the employee is required to work.

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<sup>1</sup> R7898 at [243].

6.3.1(b) **The rest period shall be counted as time worked and shall be taken without loss of pay.** Reasonable facilities shall be provided by the employer for the employee to have refreshments during such interval if the employee so desires.” (emphasis added)

2.4. The fact that a predecessor entitlement included the wording “without loss of pay” indicates its inclusion would not detract from the clause as it currently stands. In fact, given the enumerated sub-clauses at cl. 23.1(a)-(e) do not expressly indicate that payment is to continue,<sup>2</sup> it is arguably a necessary amendment. The clause as it currently stands relies on the employer or employee to infer from the clause that the pause is paid. There is nothing, other than via implication or historical knowledge of the Award, which indicates that it is to be paid.

2.5 The proposed amendment is a minor change, which will go towards achieving s. 134(1)(g) insofar as having a “simple, easy to understand” Award system, without reference to the history of the entitlement.

### **Item 93: Hours of work – regional daily newspaper office – weekend rates**

2.6 The AMWU is of the view that this matter has been resolved with the inclusion of the words “for each Saturday worked” at the end of cl. 20.7(e)(ii).

### **Item 94: Trainees – Training allowance**

2.7 The AMWU opposes any attempt to remove the training entitlement from trainees. In *Modern Awards Review 2012 – Apprentices, Trainees and Juniors*,<sup>3</sup> the Full Bench considered the application of the equivalent cl. 32.5 in the *Manufacturing and Associated Industries Award 2010* (the Manufacturing Award) to trainees. The Full Bench had regard to the entitlements in cl. 15.15 (now cl. 15.11(b)), providing for the reimbursement of training fees upon satisfactory process. Further the Full Bench noted the introduction of

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<sup>2</sup> Instead, cl. 23.1(c) refers to “wages and other costs not increasing”.

<sup>3</sup> [2013] FWCFB 9295

payment for prescribed textbooks and travel costs for block release training pursuant to the decision in [2013] FWCFB 5411.

2.8 The fact that alternative and comparable entitlements existed for apprentices elsewhere in the Manufacturing Award was part of the basis of the Full Bench's reasoning in removing application of the entitlement to apprentices. This is borne out at [29] of the decision:

“We consider that the provisions introduced or varied as a result of the decision of 22 August 2013 **are now the relevant entitlements of apprentices in relation to the reimbursement for course fees and textbooks**” (emphasis added)

2.9 Trainees do not have a comparable entitlement within the National Training Wage – Sch F. This was noted at [31] in the decision and at [34] it was said that “the only provisions which could apply to trainees are those which would otherwise be applicable under the award”.

2.10 The Full Bench was “not persuaded that it would be consistent with the modern awards objective” to exclude trainees from the operation of cl. 32.5 in the Manufacturing Award, without further material going to the practical implications of such an amendment.<sup>4</sup>

2.11 The AMWU submits that the reasoning and conditions for the removal of the training allowance for apprentices do not equally apply to trainees. A necessary pre-condition for its removal would be for a similar entitlement to exist elsewhere in the Award, or in the National Training Wage. Given that neither of which are present in the Award, cl. 17.4 should continue to apply to trainees for the above reasons, along with the operation of cl. F.6.4.

### **Item 95: Competencies**

2.12 The AMWU notes that the Ai Group opposes this substantive claim. It is important to note that the current ICP competencies were developed by

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<sup>4</sup> [2013] FWCFB 9295 at [35].

Innovation and Business Skills Australia (IBSA). The training package is the result of extensive industry consultation regarding the current and projected skill requirements of the industry. The inclusion of ICP supports the future skills and productivity of the industry and in so doing, supports the modern awards objective, namely s. 134(1)(h), insofar as relevant skills and training support productivity and efficiency.

2.13 The package in the current award (ICP05) is over a decade old and has since been superseded by ICP10 and the current package, ICP. The inclusion of the current training package is vital for the continuing relevance of the Award. Without the latest training package, the Award would have difficulty in being a “relevant minimum safety net” within the meaning of s. 134(1).

2.14 In the classification structure decision,<sup>5</sup> it was clearly anticipated that the competency units would be varied as necessary from time to time.<sup>6</sup> Indeed, this was a significant part of Senior Deputy President Marsh’s reasoning.<sup>7</sup>

#### **Item 96: Payment of wages on termination**

2.15 The AMWU is opposed to the Ai Group’s substantive claim regarding the payment of termination monies in accordance with the regular pay cycle when payment is made by EFT. It cannot be said that payment by EFT makes payment on the day of termination obsolete. Subsequent to termination employees may spend money differently than if they remained employed. An employer retaining money after termination potentially constrains the ex-employees freedom to do what they want with the money.

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<sup>5</sup> PR964271.

<sup>6</sup> PR964271, at [259].

<sup>7</sup> PR964271. At [194], evidence from Mr. John O’Flaherty was noted that “the printing industry has a program to update all competencies”.

2.16 One practical consequence is that if the pay cycle is monthly, an employee may miss an opportunity in investing their termination payment for up to a month. This may result in lost interest, and is more acutely felt if the payment involves redundancy pay or large amounts of accrued annual leave. Accordingly, payments in accord with the regular pay cycle involve an opportunity cost to employees. Conversely, employees may need their termination pay immediately due to circumstances arising directly from their termination, that is, they may be required to break a lease in anticipation of an extended period of no income. This is unjustifiable in circumstances where the employment relationship has ended. In these circumstances, it is submitted that the costs imposed on an employer (if any) are minor compared with the potential costs to be absorbed by employees as a result of the change.