

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

4 December 2015

Re: AM2014/80 AWU reply submissions on the Exposure Draft for the *Oil Refining and Manufacturing 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 reply submissions in relation to the Exposure Draft for the *Oil Refining and Manufacturing Award 2015* (Exposure Draft) as republished on 2 November 2015 appear below.

Australian Mines and Metals Association (AMMA)

4. Clause 13.1: We oppose AMMA's suggestion that the definition of "permanent night shift" from the Exposure Draft of the *Hydrocarbons Industry (Upstream) Award 2015* should be inserted. The current definition of "permanent shift" is appropriate because there are higher rates for both permanent afternoon shift (20%) and permanent night shift (30%) in clause 13.3 of the Exposure Draft. We see no reason why a different definition of what is "permanent" should apply for afternoon and night shift.
5. The *Hydrocarbons Industry (Upstream) Award 2010* and the *Black Coal Mining Industry Award 2010* differ from this award because they do not contain a higher rate for permanent afternoon shift. Hence these awards only require a definition for permanent night shift.

Australian Industry Group (AIG)

6. Clause 5.2 (d): We have previously agreed to this correction.
7. Clause 6.4 (c) (i): Given AIG has not suggested the industry allowance should not be designated as an “all purpose” allowance, their submission here does not warrant a response. The method of calculating the casual loading has already been determined by a five member Full Bench headed by the President.¹
8. Clause 9.5: We have previously agreed this correction should be made.
9. Clause 10.7 (a) (v): We have previously agreed this correction should be made.
10. Clause 11: We are not opposed to the insertion of the words proposed by AIG. The renumbering of sub-clauses can be avoided if these words are added at the end of clause 11.1.
11. Clause 20.2: We have previously agreed this correction should be made.
12. Schedule B – Summary of hourly rates of pay: We are not opposed to the insertion of a Note in the terms proposed by AIG.
13. Schedule B.2.1: We have previously agreed this correction should be made.
14. Schedule B.3.1: AIG’s submission is incorrect. The correct rate for ordinary hours worked by a casual employee is 325% of the ordinary hourly rate. This is because clause 10.3 (b) of the current award specifically requires the casual loading to be paid for each hour worked.
15. As per their submissions regarding the Exposure Draft of the *Hydrocarbons Industry (Upstream) Award 2015* and the *Mining Industry Award 2015*, AIG are relying upon the words: “Any payments under this clause are in substitution of any other loadings or penalty rates” in clause 24.3 (b) of the current award to argue the casual loading is not paid in addition to overtime rates, shift work rates and weekend and public holiday penalty rates.
16. 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.
17. This would occur because according to AIG the night shift loading of 15% in clause 24.5 (a) is “in substitution of any other loadings or penalty rates”.

¹ 4 yearly review of modern awards [2015] FWCFB 6656 at [109] and [110]

Hence the 15% night shift loading would be in substitution of the 25% casual loading that would otherwise apply.

18. This outcome is manifestly absurd and could not have been intended.
19. The purpose of clause 24.3 (b) in the current award is simply to confirm that an employee only receives one of the higher rates prescribed in clause 24 at a time.
20. We note the Fair Work Ombudsman currently advises the public that the casual loading is paid in addition to overtime rates, penalty rates and shift loadings.²
21. Schedule B.3.2: For the same reasons as outlined above for Schedule B.3.1, there is no merit in AIG's argument and it should be rejected. The proposition that a casual night shift worker would receive only the permanent employee rate plus a 15% loading is absurd.



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² See <https://calculate.fairwork.gov.au/CheckPay/Summary>