

IN THE FAIR WORK COMMISSION

Matter No.: AM2016/15 Plain Language – Substitution of public holidays
Re Application by: "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)



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

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 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.

Lodged by: Michael Nguyen AMWU National Research Centre	Telephone: +61 2 8868 1500
Address for Service: Level 3, 133 Parramatta Rd, Granville NSW 2142	Fax: +61 2 9897 9275
	Email: Michael.nguyen@amwu.asn.au

Introduction

1. The Australian Manufacturing Workers' Union (AMWU) lodges the following submission in reply in accordance with the directions issues by Vice President Hatcher 27 April 2018,¹ and in response to the statement issued by the President on 15 March 2018² regarding the substitution of public holidays by majority agreement in modern awards.
2. The AMWU continues to rely upon its submission dated 17 May 2018.³
3. This submission will outline areas of agreement with other parties' submissions, which were not outlined in the AMWU's submission and also address areas where the AMWU does not agree with a parties' submission.
4. The AMWU supports the submissions of the Construction, Forestry, Maritime, Mining and Energy Union (Construction & General Division) 17 May 2018 and the Construction, Forestry, Maritime, Mining and Energy Union (Manufacturing Division) 21 May 2018.

AiGroup and ABI Submission

5. The AMWU agrees with paragraph 7 of the AiGroup submission 17 May 2018⁴ and paragraph 5.6 of the ABI and NSW Business Chamber submission 22 May 2018⁵ that the singular employee is to be interpreted as also meaning the plural, following the guidance provided by s.23 of the *Act Interpretation Act 1901*. The AMWU agrees that this interpretation of s.115(3) would provide for majority agreements to be explicitly provided for by the NES.
6. However, the AMWU maintains its primary submission that majority agreement substitutions do not exclude employees' entitlement to refuse to work on a public holiday if the request is unreasonable under s.114, and therefore do not exclude the NES.

Business SA Submission

7. The AMWU does not agree with the Business SA submission that:

“the dissenting employee's NES entitlements will not have been excluded. As indicated above, the dissenting employee will still enjoy his or her entitlement to absence and entitlement to be paid during that absence. It is simply that those entitlements will be enjoyed on the day substituted by agreement with the majority of employees, the alternative public holiday.”

¹ [Directions 27 April 2018 in AM2016/15 Plain Language – Substitution of Public Holidays](#) Alleged NES inconsistency
² [\[2018\] FWC 1501](#)

³ [AMWU Submission 17 May 2018 in AM2016/15 Plain Language – Substitution of Public Holidays Alleged NES Inconsistency](#)

⁴ [AiGroup Submission 17 May 2018 in this matter](#) at paragraph 7.

⁵ [ABI and NSW Business Chamber 22 May 2018](#) at paragraph 5.6

8. There will be particular circumstances of each matter that will need to be taken into account. The range of factors to be taken into account when determining whether a request to work, or a refusal of a request to work on a public holiday is reasonable or not are broad. The effect of a majority agreement will not always result in an employee not being able to enjoy their entitlement to be absent and be paid for the absence on a public holiday.
9. The substitution by majority agreement, may affect public holiday penalties which are provided in Modern Awards, which may affect the balance of factors to be taken into account including the notice given by an employee that they are unable to work on the original public holiday.

End

7 June 2018