

FAIR WORK COMMISSION

AM2016/15 – 4 YEARLY REVIEW OF MODERN AWARDS – PLAIN LANGUAGE RE-DRAFTING

AWU SUBMISSION CONCERNING ANNUAL LEAVE LOADING AND SHUTDOWN PROVISIONS

Background

1. In a Statement issued on 28 February 2019¹ (“**Statement**”), a Full Bench of the Fair Work Commission referred to as the ‘Plain Language Full Bench’ invited interested parties to make submissions on a number of outstanding issues.
2. The Australian Workers’ Union (“**AWU**”) relies on the following submissions regarding the Plain Language Full Bench’s latest proposals for standard annual leave loading and shutdown provisions in a range of modern awards.

Annual leave loading

3. Paragraph [67] of the Statement contains draft wording that is intended to simplify the operation of the annual leave loading provisions of the 56 modern awards identified in Attachment B to the Statement.
4. The AWU has an interest in at least the following modern awards identified in Attachment B:

Aged Care Award 2010

Asphalt Industry Award 2010

Building and Construction General On-site Award 2010

Cement and Lime Award 2010

Cleaning Services Award 2010

Concrete Products Award 2010

¹ [2019] FWCFB 1255.

Dry Cleaning and Laundry Industry Award 2010

Electrical Power Industry Award 2010

Fast Food Industry Award 2010

Food, Beverage and Tobacco Manufacturing Award 2010

Gas Industry Award 2010

General Retail Industry Award 2010

Hair and Beauty Industry Award 2010

Health Professionals and Support Services Award 2010

Manufacturing and Associated Industries and Occupations Award 2010

Miscellaneous Award 2010

Pastoral Award 2010

Pest Control Industry Award 2010

Pharmaceutical Industry Award 2010

Premixed Concrete Award 2010

Quarrying Award 2010

Seafood Processing Award 2010

Storage Services and Wholesale Award 2010

Sugar Industry Award 2010

Timber Industry Award 2010

Vehicle Manufacturing, Repair, Services and Retail Award 2010

Waste Management Award 2010

Wine Industry Award 2010

5. The AWU has identified the following issues with the proposed wording regarding annual leave loading contained in paragraph [67] of the Statement:
 - (a) calculating the value of annual leave loading by reference to the “minimum hourly rate” may reduce existing award entitlements

because it could exclude all-purpose allowances or other additional amounts currently included in the leave loading calculations;

- (b) the reference to a “minimum hourly rate” being “inclusive” of weekend penalties and/or shift loadings appears problematic if the “minimum hourly rate” is also defined in a modern award to be a bare classification rate that doesn’t include any allowances, loadings or penalty rates; and
- (c) the wording in (c)(ii) for day workers and d(ii) is arguably more confusing than the existing provisions in many of the relevant modern awards.

6. The AWU does not support the inclusion of the proposed clause in any of the awards it has an interest in unless these issues can be rectified.
7. The following is an example of an alternative approach for the Full Bench’s consideration:

Annual leave loading

- (c) For an employee who would have worked on day work only had they not been on leave, the additional payment is the greater of:
 - (i) 17.5% of the hourly rate payable to the employee for annual leave under the Award for the employee’s ordinary hours of work in the period; or
 - (ii) the value of the additional weekend penalty rate payments for the employee’s ordinary hours of work during the period e.g. 50% of the minimum/ordinary hourly rate for work on a Saturday and 100% of the minimum/ordinary hourly rate for work on a Sunday.
 - (d) For an employee who would have worked on shiftwork had they not been on leave, the additional payment is the greater of:
 - (i) 17.5% of the hourly rate payable to the employee for annual leave under the Award for the employee’s ordinary hours of work in the period; or
 - (ii) the value of the additional shift work and weekend penalty rate payments for the employee’s ordinary hours of work during the period of leave e.g. 15% of the minimum/ordinary hourly rate for afternoon shift and 100% of the minimum/ordinary hourly rate for work on a Sunday.
8. In these examples, the term “minimum hourly rate” would be used in awards without all-purposes allowances and “ordinary hourly rate” in awards that do contain all-purpose allowances.

Shutdown provisions

9. Paragraph [84] of the Statement contains a request for parties to make submissions concerning the modern awards listed in Attachment C to the Statement. These are modern awards that currently contain a shutdown provision.
10. The AWU has an interest in at least the following highlighted modern awards identified in Attachment C:

1. Aboriginal Community Controlled Health Services Award 2010 (clause 26.3)

2. Aircraft Cabin Crew Award 2010 (clause 25.4)

3. Airline Operations—Ground Staff Award 2010 (clause 34.9)

4. Alpine Resorts Award 2010 (clause 26.3)

5. Aluminium Industry Award 2010 (clause 22.5)

6. Ambulance and Patient Transport Industry Award 2010 (clause 30.12)

7. Animal Care and Veterinary Services Award 2010 (clause 26.5)

8. Aquaculture Industry Award 2010 (clause 23.3)

9. Asphalt Industry Award 2010 (clause 25.4)

10. Banking, Finance and Insurance Award 2010 (clause 24.5)

11. Broadcasting and Recorded Entertainment Award 2010 (clause 23.4)

12. Building and Construction General On-site Award 2010 (clause 38.3)

13. Business Equipment Award 2010 (clause 31.4)

14. Car Parking Award 2010 (clause 25.4)

15. Cemetery Industry Award 2010 (clause 24.3)

16. Cement and Lime Award 2010 (clause 24.4)

17. Children's Services Award 2010 (clause 24.4)

18. Cleaning Services Award 2010 (clause 29.6)

19. Clerks—Private Sector Award 2010 (clause 29.5)

20. Coal Export Terminals Award 2010 (clause 19.7)

21. *Commercial Sales Award 2010 (clause 24.5)*
22. *Concrete Products Award 2010 (clause 26.4)*
23. *Contract Call Centres Award 2010 (clause 27.9)*
24. *Educational Services (Post-Secondary Education) Award 2010 (clause 25.6)*
25. *Electrical Power Industry Award 2010 (clause 27.8)*
26. *Electrical, Electronic and Communications Contracting Award 2010 (clause 28.5)*
27. *Food, Beverage and Tobacco Manufacturing Award 2010 (clause 34.11)*
28. *Gardening and Landscaping Services Award 2010 (clause 24.9)*
29. *Gas Industry Award 2010 (clause 25.3)*
30. *General Retail Industry Award 2010 (clause 32.5)*
31. *Graphic Arts, Printing and Publishing Award 2010 (clause 37.12)*
32. *Hair and Beauty Industry Award 2010 (clause 33.5)*
33. *Health Professionals and Support Services Award 2010 (clause 31.4)*
34. *Higher Education Industry—Academic Staff—Award 2010 (clause 27.2)*
35. *Higher Education Industry—General Staff—Award 2010 (clause 30.4)*
36. *Horse and Greyhound Training Award 2010 (clause 23.3)*
37. *Hospitality Industry (General) Award 2010 (clause 34.3)*
38. *Hydrocarbons Industry (Upstream) Award 2010 (clause 27.7)*
39. *Joinery and Building Trades Award 2010 (clause 32.9)*
40. *Journalists Published Media Award 2010 (clause 24.8)*
41. *Legal Services Award 2010 (clause 35.6)*
42. *Local Government Industry Award 2010 (clause 25.5)*
43. *Manufacturing and Associated Industries and Occupations Award 2010 (clause 41.10)*
44. *Meat Industry Award 2010 (clause 37.8)*

45. *Mining Industry Award 2010 (clause 23.6)*
46. *Mobile Crane Hiring Award 2010 (clause 25.5)*
47. *Miscellaneous Award 2010 (clause 23.4)*
48. *Nursery Award 2010 (clause 27.12)*
49. *Nurses Award 2010 (clause 31.9)*
50. *Oil Refining and Manufacturing Award 2010 (clause 26.6)*
51. *Pest Control Industry Award 2010 (clause 24.9)*
52. *Premixed Concrete Award 2010 (clause 24.4)*
53. *Pharmaceutical Industry Award 2010 (clause 26.10)*
54. *Plumbing and Fire Sprinklers Award 2010 (clause 34.3)*
55. *Poultry Processing Award 2010 (clause 27.9)*
56. *Premixed Concrete Award 2010 (clause 24.4)*
57. *Professional Employees Award 2010 (clause 19.4)*
58. *Quarrying Award 2010 (clause 29.4)*
59. *Racing Clubs Events Award 2010 (clause 30.3)*
60. *Racing Industry Ground Maintenance Award 2010 (clause 24.2)*
61. *Real Estate Industry Award 2010 (clause 25.2(c))*
62. *Registered and Licensed Clubs Award 2010 (clause 30.4)*
63. *Restaurant Industry Award 2010 (clause 35.3)*
64. *Road Transport (Long Distance Operations) Award 2010 (clause 23.8)*
65. *Road Transport and Distribution Award 2010 (clause 29.7)*
66. *Salt Industry Award 2010 (clause 25.6)*
67. *Seafood Processing Award 2010 (clause 27.11)*
68. *Security Services Industry Award 2010 (clause 24.9)*
69. *Silviculture Award 2010 (clause 29.3)*

- 70. Storage Services and Wholesale Award 2010 (clause 26.6)*
- 71. Sugar Industry Award 2010 (clause 33.5)*
- 72. Supported Employment Services Award 2010 (clause 22.3)*
- 73. Surveying Award 2010 (clause 24.3)*
- 74. Telecommunications Services Award 2010 (clause 23.9)*
- 75. Textile, Clothing, Footwear and Associated Industries Award 2010 (clause 41.7)*
- 76. Timber Industry Award 2010 (clause 33.11)*
- 77. Vehicle Manufacturing, Repair, Services and Retail Award 2010 (clause 29.12)*
- 78. Water Industry Award 2010 (clause 27.4)*
- 79. Wine Industry Award 2010 (clause 31.9)*
- 80. Wool Storage, Sampling and Testing Award 2010 (clause 26.3)*

General point – all awards

11. The AWU submits that the Full Bench's model term should be amended to prescribe that all periods of leave taken pursuant to a shutdown clause are treated as service for all purposes.
12. The AWU supports the submissions of the Construction, Forestry, Maritime, Mining and Energy Union ("CFMMEU") dated 22 March 2019 in relation to this issue.
13. The AWU also notes this entitlement is currently an explicit feature of the shutdown provisions in the following modern awards:
- *Food, Beverage and Tobacco Manufacturing Award 2010 (clause 34.11);*
 - *Manufacturing and Associated Industries and Occupations Award 2010 (clause 41.10);*
 - *Pharmaceutical Industry Award 2010 (clause 26.10);*
 - *Seafood Processing Award 2010 (clause 27.11);*
 - *Timber Industry Award 2010 (clause 33.11); and*
 - *Wine Industry Award 2010 (clause 31.9).*

Specific awards – insertion of model term – award variations

14. Subject to the above submission concerning periods of leave being treated as service, the AWU generally does not oppose the insertion of the model term into the modern awards it has an interest in.
15. However, the AWU submits that award-specific variations to the model term should be made for awards which currently contain express additional limitations on when the shutdown provisions can be applied.
16. The following modern awards appear to fall into this category:
- *Airline Operations–Ground Staff Award 2010 (clause 34.9)*
 - *Asphalt Industry Award 2010 (clause 25.4)*
 - *Food, Beverage and Tobacco Manufacturing Award 2010 (clause 34.11);*
 - *Gardening and Landscaping Services Award 2010 (clause 24.9);*
 - *Manufacturing and Associated Industries and Occupations Award 2010 (clause 41.10);*
 - *Pharmaceutical Industry Award 2010 (clause 26.10);*
 - *Plumbing and Fire Sprinklers Award 2010 (clause 34.3)*
 - *Seafood Processing Award 2010 (clause 27.11);*
 - *Timber Industry Award 2010 (clause 33.11);*
 - *Vehicle Manufacturing, Repair, Services and Retail Award 2010 (clause 29.12); and*
 - *Wine Industry Award 2010 (clause 31.9).*



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25 MARCH 2019