

## IN THE FAIR WORK COMMISSION

**Matter No.:** AM2016/15 Plain Language Standard Clauses



### **Submissions 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.

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## Introduction

1. The Australian Manufacturing Workers' Union (AMWU) makes the following Submissions in response to Submissions lodged by various parties following the Full Bench Statement 21 August 2017<sup>1</sup> and in the Full Bench Decision 28 August 2017.<sup>2</sup>
2. The AMWU continues to rely upon its submissions 4 September 2017 and the submissions of the Australian Council of Trade Unions.
3. The AMWU will be making submissions in response to the following issues raised by employer associations regarding the Requirement for Notice of Termination by an Employee clause E.1(c):
  - a. The consideration given to issues by the Award Modernisation Full Bench.
  - b. The context of the original TCR Decision.
  - c. The Legal Avenues Available to an Employer.
  - d. The Award clause is much more onerous on workers than business.
  - e. Reducing taxable income is irrelevant for Award reliant workers.
  - f. Employer discomfort is superficial.

## The Award Modernisation Full Bench

4. The AiGroup submits that the Award Modernisation Full Bench already gave due consideration to the issues around the interaction of the NES with the Modern Awards.
5. The Award Modernisation Full Bench at the time of considering that standard term for Notice of Termination by an Employee did not consider the full terms of the *Fair Work Act 2009*. There was no specific consideration of the conformity of the Notice of Termination by an Employee Clause with all of the requirements in the *Fair Work Act 2009*.

## The Context of the Original TCR Decision

6. The AiGroup's reliance on the original TCR Decision from 1984 to support its so-called "merit" argument, overlooks the significant changes that have occurred since that decision.
7. The most obvious change that has occurred since then, is the significant disparity between standard of living of an average Australian wage earner as compared to a minimum Award wage earner.

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<sup>1</sup> [\[2017\] FWCFB 4355](#)

<sup>2</sup> [\[2017\] FWCFB 4419](#)

8. As the ACTU's submission from the 2016-17 Annual Wage Review<sup>3</sup> outlined:

*"The NMW was 61.5% of the median full time earnings at 1996. This has fallen overall to 53.4%, stable at the two years 2014 and 2015, most recent median figures available. The fall in the minimum wage bite as a share of AWOTE is even starker, from 52.8% down to 44.8% at 2016."*

9. Its clear that the living standards of Award wage reliant employees have been falling when compared to the standards achieved by average wages. While the penalty could arguably be superficially unchanged when comparing an Award reliant worker of 2017 with an Award reliance worker in 1984. There is a substantial difference in reality, because the Award reliant worker in 2017 exists in a context where members of the same community earning average wages are experiencing a much higher standard of living when compared to 1984. In this context, the penalty in the Award has substantially increased how much it is dragging the Award reliant worker down as compared to other workers in the Australian community.
10. The original decision also did not take into account or explain why the superficial "reciprocal arrangement" resulted in any meaningful fairness or equity taking into account the economic position of workers as compared to businesses in the broader economy.

### **The legal avenues available to an employer**

11. The AiGroup assert that there are less legal avenue available to an employer because the small claims jurisdiction isn't available for breaches of the Award s.45.
12. The wherewithal of Award reliant workers when it comes to any court proceeding will be significantly reduced as compared to any business operator, large or small. At the end of the day, an employer is ultimately in control of any monies owed to workers and it is always up to the worker to pursue payments in their own time through the courts. The lack of resources able to enforce wages and entitlements has resulted in the widespread underpayment of Award reliant workers, including by Businesses that are household names.
13. The crux of this issue is encapsulated by the AiGroup's concession that "an employer would need to convince the appropriate court that an order requiring a payment to the employer was appropriate in the particular circumstance."<sup>4</sup>
14. That the employer would need to demonstrate that they suffered some form of damage warranting a payment from the employee is exactly how the system should work. Particularly given that employers already manage quite well with the unexpected needs of employees to be absent from work for personal leave, community service leave and other leave that may be unpaid.

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<sup>3</sup> <https://www.fwc.gov.au/documents/sites/wagereview2017/submissions/actusub.pdf> at page 109 to 110

<sup>4</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-sub-aig-040917.pdf> paragraph 80 dot point 1.

15. Leaving the system to require employers to seriously consider whether they have suffered any real damage, prior to commencing legal proceedings, will ensure only circumstances of actual damage will proceed to legal proceedings. A worker with an ability to cause serious commercial damage to a business by leaving it, is likely to be aware of that ability and be on notice about it through common law contractual arrangements.

### **The Award clause is much more onerous on workers than on business**

16. The AiGroup try and argue that the term is less onerous on employees than employers, because the rate of pay is different. This is a very superficial analysis that ignores the fact that on the one hand is a business operation with resources, planning and capabilities, required to comply with minimum entitlements established by a developed economy and on the other hand is a worker deriving the basis of their livelihood from the sale of their labour within the limited constraints of time.
17. The AMWU relies upon its previous submissions 4 September 2017 about the Healthy Living Budget Standards and the calculated penalties based on the minimum wages in the Manufacturing and Associated Industries and Occupations Award 2010.<sup>5</sup>
18. The trend towards employers increasingly paying wages on a monthly basis is still a live unresolved issue in the payment of wages common issue.

### **Reducing taxable income is irrelevant for Award wage workers**

19. The AiGroup's argument about reducing taxable income is misses the reality of how close to the Healthy Living Budget Standard Award Wages actually are.

### **Employer discomfort from an Award reliant employee failing to provide notice is superficial**

20. Employers go to great lengths to craft restraint of trade clauses for workers who they perceive to hold potential to cause damage to the business. The restraint of trade clauses operate in a wide range of circumstances, each circumstance being a severable part of the clause and operational pending a decision of a court about its operation.
21. The employer submissions in these proceedings indicate that the discomfort an employer may experience is superficial.

**End**

**11 September 2017**

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<sup>5</sup> <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-sub-amwu-040917.pdf> at paragraphs 8 - 12 and 30 to 45.