

Commissioner Roe
Fair Work Commission
Level 10, Terrace Tower
80 William St
EAST SYDNEY NSW 2011



By email:
Chambers.Roe.C@fwc.gov.au
AMOD@fwc.gov.au

25 May 2016

Dear Commissioner Roe,

We write in relation to the exposure drafts of the *Banking, Finance and Insurance Award 2010* (MA000019) recently released by the Commission.

We note that in each of the exposure drafts there has been a change to the wording of the current clause in relation to overtime entitlements for employees who resume or continue work at their employer's direction. We are of the view that the change in language has the unintended effect of reducing the current entitlement.

Clause 13.6(b)(ii)(first dot point) of the most recent exposure draft (republished 27 April 2016) says:

"...the employee must be paid at 200% of the minimum hourly rate until the employee is released from duty".

The entitlement conferred above is not the same as what presently exists at clause 23.8 (third paragraph) of the current award:

"...they must be paid at double rates until they are released from duty for such period".

(underlined emphasis is writer's own)

In our view "double rates" in the current award means double (or 200% of) the base rate the employee is paid. This is the approach taken at sections 90, 99, 106 and 116 of the *Fair Work Act 2009* ('the Act') in relation to payments for annual leave, personal/carer's leave, compassionate leave and absence on a public holiday respectively in that the employer must pay the employee at the employee's base rate of pay and not at minimum rates. The base rate of pay is defined in section 16 of the Act to be the rate of pay payable to the employee for his/her ordinary hours of work and including overtime and loadings. This is also the approach that has been taken in our industry in the negotiation of enterprise agreements to ensure that the better off overall test is met.

We note that the *Clerks – Private Sector Award 2010* (MA000002) is similarly affected (compare clause 13.4(b)(ii)(first dot point) of the current exposure draft to clause 27.3 of the current award).

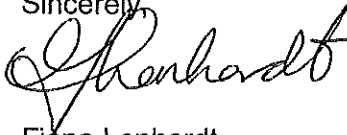
A change in the language used in this clause may be prudent to avoid uncertainty; we would suggest the following language instead:

"...the employee must be paid at 200% of their base rate of pay until the employee is released from duty".

The above change would clarify the current position.

We note that other awards may similarly impacted by this proposed change.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fiona Lenhardt", is written over a long horizontal line that extends across the page.

Fiona Lenhardt
National Industrial Officer.