



Australian Government

# Fair Work

## OMBUDSMAN

24 November 2014

The Associate to Hon Justice Iain Ross AO  
Fair Work Commission  
11 Exhibition Street  
Melbourne Victoria 3000

By email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

Dear Associate,

### Award Stage, Group 2 Modern Awards

I refer to paragraphs 20 and 23 of the Fair Work Commission's (**Commission**) Guide to Award Stage which invited interested persons to provide a short outline of issues relevant to each award stage.

Please find **attached** a table referring to specific award provisions within the Group 2 Modern Awards. These provisions have been identified through analysis of the Fair Work Ombudsman's (**FWO**) wide-ranging interactions with workplace participants (including small businesses, individual employees, as well as employer and employee representatives). The attached table includes queries commonly raised with the FWO and issues which may be a source of uncertainty for workplace participants to understand and implement award entitlements.

The FWO provides this information to assist the Commission and relevant parties to achieve the modern award objectives, in particular, the need to ensure a simple easy to understand modern award system under subsection 134(1)(g) of the *Fair Work Act 2009*.

Unless otherwise requested to do so, the FWO does not intend to provide further comment or submissions on the attached information. Further, the FWO does not intend to appear at the hearings for the Group 2 Modern Awards.

Yours sincerely,



Janine Webster  
Chief Counsel

## TABLE OF PROVISIONS RELEVANT TO THE AWARD STAGE, GROUP 2 MODERN AWARDS

Issue	Clause(s) Number	Description of issue
<b>Alpine Resorts Award 2010 [MA000092]</b>		
1	25.1	<p>Clause 25.1 states that employees (other than Snowsports Instructors) are entitled to double time and a half for hours worked on a public holiday. This clause also states that “in the case of casual employees this rate includes the casual loading of 25%”. It may be unclear whether clause 25.1 means that a casual employee is to be paid:</p> <ul style="list-style-type: none"> <li>• the public holiday penalty calculated as 250% of the base rate of pay (with no further casual loading payable); or</li> <li>• the public holiday penalty calculated as 250% of the base rate of pay plus the 25% casual loading; or</li> <li>• the public holiday penalty calculated as 250% of the casually loaded rate of pay.</li> </ul>
<b>Animal Care and Veterinary Services Award [MA000118]</b>		
2	16.1(b), 22.3(c)	<p>Clause 22.3(c) provides that associates should receive a minimum of three full days off per fortnight, which will accumulate if not given. It may be unclear whether this reference to “days off” includes time when an associate is allocated to on call duties in accordance with clause 16.1(b), but does not attend work during that period.</p>
3	24.2(b)(ii)	<p>Clause 24.2(b)(ii) provides for a minimum payment of three hours for overtime worked on a Sunday. The FWO has received enquiries as to the operation of the minimum payment in circumstances where an employee works on two separate periods in the same day (for example a split shift). It may be unclear whether the minimum payment period under clause 24.2(b)(ii) applies for each occasion an employee is engaged to work overtime on a Sunday or if it applies once per day.</p>
4	25	<p>Clause 25 contains entitlements for shiftworkers (other than veterinary surgeons) such as overtime and penalty rates for Saturdays, Sundays and public holidays, however the award does not contain a definition of “shiftworker” or “shiftwork”. It may therefore be unclear when these entitlements apply.</p>
5	29.2(c)	<p>The FWO has received enquiries as to what rate of pay is payable for work performed on a public holiday. Clause 29.2 provides that where a public holiday falls on the weekend and a full-time veterinary surgeon is required to work both the actual and substitute public holiday, they will be paid the normal Saturday or Sunday rate for work on the actual day and for the substitute day receive either a day off, additional annual leave, or “payment of <u>public holiday rates</u> for the day’s work”. Apart from clause 29.2(h)(ii), which deals with penalty rates when Christmas day falls on a Saturday or Sunday, the award does not establish a rate of pay for work performed on a public holiday.</p>

Issue	Clause(s) Number	Description of issue
6	29.3	Clause 29.3 provides that employees (other than veterinary surgeons) required to work public holidays are entitled to not less than four hours pay at penalty rates provided the employee is available to work for four hours. The FWO has received enquiries in respect of an employee who works on two separate periods during the same day (for example a split shift) as it may not be expressly clear whether this minimum payment period applies for each occasion the employee is required to work on a public holiday or if it applies once per day.
<b>Fire Fighting Industry Award 2010 [MA000111]</b>		
7	15, 27.2	<p>It may be unclear whether the allowances payable to public sector employees under clause 27.2 for working Saturdays, Sundays and public holidays are calculated on the hourly rate derived from:</p> <ul style="list-style-type: none"> <li>• the total weekly wage (i.e. inclusive of loadings); or</li> <li>• the minimum weekly wage (i.e. exclusive of loadings);</li> </ul> <p>contained in clause 15.</p> <p>Clauses 27.2(a) to (d) state that the allowances payable for working Saturdays, Sundays and public holidays are calculated on the employee's "hourly rate". It may be unclear which of the above two weekly wage figures contained in clause 15 are to be used in calculating the hourly rate of pay.</p>
<b>Graphic Arts, Printing and Publishing Award 2010 [MA000026]</b>		
8	12.4(a), 30, 33.2	<p>The FWO has received enquiries about what payment a casual would receive when they work overtime. Clause 33.2 states that overtime is payable for hours worked in excess of or outside the <u>ordinary hours</u> listed in clause 30. It may be unclear whether the casual loading payable under clause 12.4(a) is paid when a casual employee works overtime as clause 12.4(a) states that:</p> <ul style="list-style-type: none"> <li>• a casual employee receives a 25% loading when working <u>ordinary time</u> (which implies that the loading may not be payable during overtime); and</li> <li>• the loading forms part of the <u>all-purpose</u> rate (which implies that the loading is payable during overtime).</li> </ul>
<b>Health Professionals and Support Services Award 2010 [MA000027]</b>		
9	4.1(b), 15, Schedule C	<p>The FWO has received enquiries about whether health professionals other than those listed in Schedule C may be covered by the award.</p> <p>Clause 4.1(b) states that this industry and occupational award covers an "employer engaging a health professional employee falling within the classification listed in clause 15". Clause 15 then sets out various pay rates for the various levels of Health Professional Employees. Clause B.2 of Schedule B provides that a list of indicative roles for each pay level. Schedule C contains a list of "Common Health Professionals" however, it may be unclear how the Schedule C list is to be applied (e.g. it may be interpreted as a non-exhaustive list of examples of the types of health professionals covered by the award or as a limit on the scope of coverage of the award).</p>

Issue	Clause(s) Number	Description of issue
10	10.4(c)	Clause 10.4(c) states that the minimum period of engagement for a casual is three hours (with the exception of cleaners employed in private medical practices). The FWO has received enquiries whether these hours must be worked consecutively to satisfy these minimum engagement periods, or whether the minimum engagements are daily minimums which can be worked in two or more occasions (for example, over a split shift).
11	26, 28.1	<p>It may be unclear as to whether casuals are entitled to overtime, and if they are, what they should be paid. If casuals are entitled to overtime, it may not be clear whether they would be entitled to the overtime rates contained in clause 28.1 or the rate of pay contained in clause 26.2 due to the reference to "all time worked" in clause 26.2.</p> <p>Clause 26.2 provides that a casual employee who works on a Saturday or Sunday will be paid a loading of 75% instead of the casual loading for "all time worked".</p> <p>Clause 28.1 provides the following overtime rates:</p> <ul style="list-style-type: none"> <li>• time and a half for the first 2 hours and double time thereafter on Monday to Saturday; and</li> <li>• double time on Sunday.</li> </ul> <p>Clause 23.1 states that the ordinary hours for a <u>full-time</u> employee are an average of 38 hours per week in a fortnight or four week period. Clause 23.2 states that not more than 10 ordinary hours of work (exclusive of meal breaks) are to be worked in any one day.</p>
12	29	Clause 29 provides that where a shiftworker's ordinary hours finish between 6.00 pm and 8.00 am or commence between 6.00 pm and 6.00 am, the employee will be paid an additional 15% of their ordinary rate of pay. The FWO has received enquiries as to whether the additional 15% is paid only for the hours within the span of hours contained in clause 29, or if the loading is paid for every hour worked in the shift.
<b>Medical Practitioners Award 2010 [MA000031]</b>		
13	20.1(b)	Clause 20.1(b) provides that the ordinary hours of work for an employee will be an average of 38 hours per week and, by agreement, may be worked "over 40 hours in any period of seven consecutive days or 80 hours in any period of 14 consecutive days". The references to both a 38 hour and 40 hour week (or 80 hour fortnight) may have the capacity to cause confusion.



Issue	Clause(s) Number	Description of issue
<b>Nurses Award 2010 [MA000034]</b>		
14	21, 28.1	<p>The FWO has received enquiries as to if and when casuals are entitled to overtime. These enquiries appear to arise because some of the subclauses contained in clause 21, which relates to ordinary hours, are generic whilst others only refer to full-time employees.</p> <p>Specifically:</p> <ul style="list-style-type: none"> <li>• clause 21.1 provides that the ordinary hours of work for a <u>full-time</u> employee are 38 hours per week, 76 hours per fortnight or 152 hours over 28 days;</li> <li>• clause 21.2 provides that the shift length of ordinary hours of work per day will be a maximum of 10 hours exclusive of meal breaks.</li> </ul>
15	21, 22, 26, 28	<p>The FWO has received enquiries as to whether an employee who works on Saturday or Sunday is entitled to penalty rates of pay under clause 26 or the overtime rates under clause 28. These enquiries appear to arise as the award contains two separate provisions relating to work performed on a Saturday or Sunday (clauses 26 titled “Saturday and Sunday work” and clause 28 “Overtime”) and two separate provisions relating to ordinary hours (clause 21 titled “Ordinary hours of work” and clause 22, titled “Span of hours”).</p>
16	Schedule B.4.5	<p>Schedule B.4.5 provides for an “Enrolled nurse—pay point 5” classification. The definition for this classification states that an employee will be appointed to this pay point based on training and experience including “<u>not</u> more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for pay point 4...”. The FWO has received enquiries as to whether an employee can still be classified at this level if they have <u>more</u> than “one further year of practical experience”, as the next paypoint (registered nurse) requires further qualifications.</p>
<b>Passenger Vehicle Transportation Award 2010 [MA000063]</b>		
17	10.5(d)	<p>Clause 10.5(d) provides that a casual employee who is engaged solely for the purpose of transporting school children to and from school is to be paid a minimum of 2 hours for each engagement. It may not be clear whether a casual employee employed to collect school children in the morning and then again in the afternoon is entitled to be paid a minimum of two hours for each run, (i.e. one engagement being the morning run and another being the afternoon run), or alternatively whether both the collection and drop off of school children is considered to be one engagement.</p>

Issue	Clause(s) Number	Description of issue
<b>Pharmacy Industry Award 2010 [MA000012]</b>		
18	26.1(a), 26.2(a)(iii)	<p>The FWO has received enquiries as to whether casual employees are able to work overtime (i.e. whether they can work in excess of the ordinary hours in the award) and if so, whether they are entitled to overtime rates for this work. This is because:</p> <ul style="list-style-type: none"> <li>• clause 26.1(a) states that an employer may require an employee "<u>other than a casual</u> to work reasonable overtime at overtime rates"; and</li> <li>• clause 26.2(a)(iii) states that for casual employees, the casual loading is not payable on overtime (which implies that casuals are able to work overtime).</li> </ul>
<b>Road Transport (Long Distance Operations) Award 2010 [MA000039]</b>		
19	13.2(c)	<p>Clause 13.2(c) provides for a payment for full-time employees who are "held on call" for the period they remain "on call", however the award does not define what "held on call" means. The FWO has received enquiries about when this entitlement applies.</p>
20	13.1, 13.2, 13.3(a), 13.4, 13.5, 13.6	<p>The FWO has received enquiries about the interaction between the minimum weekly rates of pay contained in clause 13.1 and the methods of payment under clauses 13.4 and 13.5. Clause 13.2 provides for a guaranteed minimum payment based on the rates contained in clause 13.1, "minimum weekly rates of pay". These rates of pay appear to be payable as a guaranteed minimum fortnightly payment if the employee does not earn this amount in a fortnight under either of the payment methods listed in clause 13.4 (cents per kilometre) or 13.5 (hourly driving method).</p> <p>It may not be clear that where an employee is engaged in driving duties on a long distance driving operation, they must be paid in accordance with either:</p> <ul style="list-style-type: none"> <li>• the "cents per kilometre" rates in clause 13.4; or</li> <li>• the hourly rate in clause 13.5;</li> </ul> <p>and that the rate prescribed in clause 13.2 only applies for the purposes of ensuring a guaranteed minimum amount.</p>

Issue	Clause(s) Number	Description of issue
21	13.1, 20.5(a), 20.5(d)	<p>The FWO has received enquiries as to the rate payable for a single rostered day off. Clause 20.5(a) provides that full-time employees are entitled to a rostered day off for each month of work. Clause 20.5(d) provides that rostered days off are to be paid in accordance with the rates set out in clause 13.1. Clause 13.1 provides for guaranteed minimum <u>weekly</u> rates of pay.</p> <p>The FWO has received enquiries about how a daily rate is payable for an RDO from a weekly rate, where an employee:</p> <ul style="list-style-type: none"> <li>• is paid by cents per kilometre under clause 13.4;</li> <li>• is paid the hourly rate of pay method under clause 13.5; or</li> <li>• does not work a 38 hour week (for example works extended hours on rostered days).</li> </ul> <p>The FWO is aware that clause 20.5(b) was recently varied (effective from the pay period commencing 8 July 2014). As a result of this variation an employer and an individual employee can agree in writing to cash out one or more rostered days off (at a rate of 20% of the applicable minimum weekly rate) at the time the employee accesses annual leave. However, the above issue may still be unclear as the recent variation dealt with the amount payable when a rostered day off is cashed out but did not deal with the amount payable when a rostered day off is taken.</p>
22	14.1(c)(i)	<p>Clause 14.1(c)(i) provides that an employee engaged as a local driver under the <i>Road Transport and Distribution Award 2010</i>, who is required to temporarily transfer to duties covered by the <i>Road Transport (Long Distance Operations) Award 2010</i>, is entitled an allowance of 1.24% of the “standard rate on each occasion” (where the standard rate is defined as the minimum weekly rate for a Grade 4 employee under clause 13.1). It may not be clear whether the 1.24% allowance is to be paid:</p> <ul style="list-style-type: none"> <li>• as a fixed sum allowance of 1.24% of the standard rate (i.e. \$9.11) for each occasion the employee: <ul style="list-style-type: none"> <li>○ is transferred to long distance duties; or</li> <li>○ carries out a long distance task; or</li> </ul> </li> <li>• incorporated on an hourly basis for “each occasion” the employee carries out those duties.</li> </ul>
<b>Road Transport and Distribution Award 2010 [MA000038]</b>		
23	3.1(f), 4.1, 23	<p>The absence of a definition for “petroleum products” in the award may create uncertainty in determining whether:</p> <ul style="list-style-type: none"> <li>• an employer and employee are engaged in the carting and/or distribution of petroleum products as required by the definition of “road transport and distribution industry” in clause 3.1(f) in order to be covered under clause 4.1 of the award; and</li> <li>• an employee is engaged as an oil distribution worker under clause 23.</li> </ul>

Issue	Clause(s) Number	Description of issue
24	3.1, 4	<p>The FWO has received enquiries regarding the definition of the road, transport and distribution industry in clause 3.1 of the award and whether the definition is intended to include the actual transport of the vehicles themselves (i.e. the empty vehicle). This issue was considered in <i>Rooth v S.Brady Industries Pty Ltd</i> [2014] FCCA 1435 where the Federal Circuit Court considered whether the <i>Road, Transport and Distribution Award 2010</i> or the <i>Road Transport (Long Distance Operations) Award 2010</i> was the appropriate award providing coverage for employees involved in the actual transport of the vehicles themselves or whether the employees were award free. In this matter, the Court decided that the employee was covered by the Road Transport and Distribution Award 2010. This is a live issue with an employer foreshadowing to the FWO their intention to make an application to the Federal Court of Australia seeking a declaration as to the proper interpretation of the coverage provision in the award.</p>
25	12.4(f), 23.2	<p>It may be difficult to determine the hourly wage for part-time oil distribution workers as:</p> <ul style="list-style-type: none"> <li>• clause 12.4(f) states that a part-time employee is paid 1/38<sup>th</sup> of the weekly wage prescribed by clause 15 per hour worked; and</li> <li>• clause 23.2 states that the ordinary weekly hours for oil distribution workers are 35 hours per week.</li> </ul>
26	16.2(c)	<p>The FWO has received enquiries as to the basis for calculating the amount of “money handled” for the purposes of determining the allowance payable under clause 16.2(c). For example it may not be clear if the amount of money handled is determined on the basis of:</p> <ul style="list-style-type: none"> <li>• the highest amount handled at any given moment over the entire course of the week;</li> <li>• the total amount handled in a given week;</li> <li>• the total amount handled each day; or</li> <li>• some other method.</li> </ul>
27	22.4	<p>Clause 22.4 of the award provides that employees working in the scenarios listed in clause 22.4 are entitled to have their weekly wage increased by 30% where they are required by their employer to commence their ordinary hours of work between 12.01 am and 6.00 am. It may be unclear:</p> <ul style="list-style-type: none"> <li>• whether the extra 30% applies to all hours worked by the employee during the week, or only for those shifts when they commence their ordinary hours during the times listed in clause 22.4, or only for those hours worked between 12:01 am and 6:00 am;</li> <li>• whether an employee working in a circumstance listed in clause 22.4 receives a higher payment for working on a public holiday or overtime and if so, how the penalty/overtime interacts with the additional 30% loading (for example is the penalty applied to the base rate of pay or the rate of pay including the additional loading); and</li> <li>• how this “weekly rate” is paid to part-time or casual employees (i.e. whether the 30% is converted to an hourly amount).</li> </ul>



Issue	Clause(s) Number	Description of issue
28	22.3, 22.4, 24.1, 24.3	<p>The FWO has received enquiries about the correct rate of pay where an employee:</p> <ul style="list-style-type: none"> <li>• is working shiftwork within the definition of clause 24.1(d); but</li> <li>• those shifts do not fit within the definition of afternoon, day or night shift in clauses 24.1(a), (b) and (c).</li> </ul> <p>For example, an employee works a shift starting at 1.00 am and ending at 9.00 am five nights a week, as their ongoing ordinary hours for 6 months. In this scenario, the employee would be considered to be working shiftwork under clause 24.1(d), however their shift is not considered an afternoon, day or night shift under clauses 24.1(a), (b) and (c). There can be uncertainty as to whether such employees are entitled to:</p> <ul style="list-style-type: none"> <li>• the base rate of pay;</li> <li>• shift allowances under clause 24.3; or</li> <li>• overtime payable to day workers under clause 22.3.</li> </ul>
29	22, 27.1	<p>Clause 27.1 provides that overtime applies for day workers for “all work done <u>outside</u> ordinary hours”.</p> <p>Clause 24.5 provides that overtime applies for shiftworkers for “all time worked <u>outside or in excess of</u> the ordinary shift hours”.</p> <p>It may be unclear whether the difference in wording between these two clauses indicates a different application of overtime for the two different types of employees. For example, an award user may be unclear as to whether a day worker is entitled to receive overtime payments when:</p> <ul style="list-style-type: none"> <li>• working in excess of 8 hours per day or 38 hours per week (i.e. in excess of ordinary hours); or</li> <li>• only for hours worked outside of ordinary span of hours (that is, Monday – Friday 5:30 am to 6:30 pm or such other ordinary hours as agreed under clause 22.2).</li> </ul>
30	23, 24.2	<p>The FWO has received enquiries as to whether the provisions relating to shiftwork contained in clause 24.2 apply to oil distribution employees undertaking shiftwork. These enquiries arise because clause 24.2 contains general provisions relating to shiftwork, however the award contains a separate section for oil distribution employees in clause 23.</p>
31	Schedule C	<p>The FWO has received enquiries as to whether the award covers an employee engaged to clean the premises of a transport company (and not vehicles). The classification Transport Worker Grade 1 in Schedule 1 refers to a greaser and cleaner, however it may be unclear whether a person only engaged in cleaning duties would be covered by this classification.</p>

Issue	Clause(s) Number	Description of issue
32	Schedule C	<p>It may be unclear to parties that additional loadings are payable to particular drivers when driving particular vehicles. This is because these loadings are contained in Schedule C (rather than the minimum wage provisions in clause 15 of the award). Schedule C of the award provides for the following classifications to get extra pay (described as a percentage of the standard rate (as part of the weekly wage for all purposes)) when driving certain vehicles:</p> <ul style="list-style-type: none"> <li>• Transport worker Grade 7; and</li> <li>• Transport worker Grade 10.</li> </ul>
<b>Storage Services and Wholesale Award 2010 [MA000084]</b>		
33	11.2	<p>Clause 11.2 states that a full-time employee is one “engaged and paid by the week”. This clause may have the capacity to cause confusion as full-time employment is permanent and ongoing in nature and certain obligations:</p> <ul style="list-style-type: none"> <li>• need to be calculated by reference to the employee’s length of service; and</li> <li>• may exceed one week (such as notice of termination).</li> </ul>
34	15.1, Schedule B	<p>Clause 15.1 provides different pay rates for Level 1 employees “on commencement, after 3 months and after 12 months”. The FWO has received enquiries as to whether this reference to service is a reference to the employee’s service with the particular employer or service within the industry.</p>
35	22.1, 25	<p>Clauses 22 and 25 contain the ordinary hours for “day workers” and shiftwork respectively. It may not be clear what entitlements apply to employees whose hours of work traverse the hours that apply to both shift and day workers.</p> <p>For example, an employee’s roster might contain a combination of shifts, whereby some days, the employee works from 9.00 am to 5.00 pm and others from 5.00 am to 1.00 pm. For the days starting at 5.00 am, it may not be clear whether the employee is entitled to:</p> <ul style="list-style-type: none"> <li>• overtime for the hours outside the spread of hours for day workers; or</li> <li>• the early morning shift allowance, because the shift is an early morning shift as defined in clause 25.</li> </ul>
36	22.2(b)	<p>Clause 22.2(b) states that the spread of ordinary hours may be altered by up to one hour at either end of the spread, by agreement between an employer and the majority of employees concerned or between the employee and the employer. The FWO has received enquiries about whether this means that the span of ordinary hours can be increased by:</p> <ul style="list-style-type: none"> <li>• up to one hour at one end of the spread only (so that the number of hours within the spread is increased by up to one hour); or</li> <li>• by up to one hour at both ends of the spread (so that the number of hours within the spread remains the same).</li> </ul>

Issue	Clause(s) Number	Description of issue
37	25.1(d)	<p>Clause 25.1(d) states that by agreement between the employer and the majority of employees, the span of hours over which afternoon shift may be worked may be altered by up to one hour at either end of the span. It may be unclear whether this means that the span of ordinary hours can be increased by:</p> <ul style="list-style-type: none"> <li>• up to one hour at one end of the spread only (so that the number of hours within the spread is increased by up to one hour); or</li> <li>• by up to one hour at both ends of the spread (so that the number of hours within the spread remains the same).</li> </ul>
38	26.4(a)	<p>The FWO has received enquiries about the applicable loading payable to an employee on annual leave. Clause 26.4(a) provides that “the rate of pay for annual leave is the employee’s rate of pay at the time the employee takes the annual leave, plus 17.5% of that rate or the relevant weekend penalty rates, whichever is greater but not both”. In determining which rate is to apply, it may not be clear whether the two entitlements are to be compared:</p> <ul style="list-style-type: none"> <li>• on a daily basis with each day of annual leave being assessed separately; or</li> <li>• as a whole over the entire period of annual leave.</li> </ul>
39	26.S(c)	<p>Clause 26.5 deals with annual close downs. It may be unclear what the “qualifying period of employment” in clause 26.S(c) refers to as this is not a defined term.</p>
<b>Transport (Cash in Transit) Award 2010 [MA000042]</b>		
40	25.10	<p>Clause 25.10 is titled “Rate when shift extends beyond midnight” and states that each shift will be paid for at the rate applicable to the day on which the “major portion” of the shift is worked. The FWO has received enquiries as to how this clause is to apply when a shift is equally split across two days.</p>
<b>Waste Management Award 2010 [MA000043]</b>		
41	3.1, 10.6, 14.4, 28.3(a), 28.3(b), 30, 31.3,	<p>It may be unclear as to whether the “relevant minimum wage” referred to in clauses 28.3(a) and (b), 30, 31.3 and 10.6 is intended to include the 25% casual loading payable under clause 14.4.</p>
42	27, 28.3, 28.5(c), 32.1	<p>The ordinary hours and overtime entitlements for shiftworkers may be unclear. Clause 28.5(c) is titled “Shiftwork – Overtime” and states that overtime is payable where the shiftwork is performed:</p> <ul style="list-style-type: none"> <li>• outside ordinary hours; or</li> <li>• in excess of 8 hours per shift.</li> </ul> <p>It may be unclear whether the reference in clause 28.5(c) to “ordinary hours” is intending to refer to clause 27 and if so, it may be unclear who clause 32.1 applies to as clause 32.1 contemplates full-time employees being regularly rostered to work ordinary hours on Saturday or Sundays, whereas clause 27.2 limits ordinary hours to Monday to Friday.</p>

Issue	Clause(s) Number	Description of issue
43	31.2	The FWO has received enquiries about what is meant by "any custom now prevailing" in clause 31.2. This clause states that "subject to any custom now prevailing" under which employees are required regularly to hold themselves in readiness for call-back, employees on-call after ordinary hours are paid the relevant minimum wage calculated hourly for all such time.