



A•S•U

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Friday, 10 June 2016

Justice Ross  
Fair Work Commission  
Level 4  
11 Exhibition Street  
Melbourne VIC 3000

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

Dear Associate,

**Re: AM2014/232 – Labour Market Assistance Industry Award 2010**

Further to his honour's directions at Hearing 6 June 2016, in the above mentioned matter *AM2014/232 – Labour Market Assistance Industry Award 2010*. At paragraph number 1608 of Transcript, Justice Ross gave the Unions an opportunity to clarify a position in seven days.

The ASU have given further consideration to the Exposure Draft and Summary of Submissions issued by the Commission on 18 December 2015 and 20 May 2016 respectively. We write in relation to those items, as well as the ASU's correspondence of 29 October 2015; which sought to raise a number of points of clarification in relation to the proposed timetable issued on 21<sup>st</sup> October 2015.

In October, the ASU queried whether it was to be intended that the awards are referred to individual commissioners for conferencing and/or hearing and determination as had occurred with group 1 and 2 awards. Prior to issuing other revised Group 3 Exposure Drafts and Summaries of Submissions, many other Group 3 awards have been referred for conferencing but to date, the *Labour Market Assistance Industry Award 2010* matter has not. The general outcome of proceedings in other Group 3 matters has been that the drafting and technical issues have been dealt with in conferencing ahead of substantive issues.

In consultation with Jobs Australia and the CPSU the ASU confirms that we seek an opportunity to properly consider the forthcoming detailed proposal for Item 14 of the Summary of Submissions and an opportunity to reply.

As directed, the ASU also provides a position on the current Summary of Submissions, as follows:

Item 8.

The Employers have submitted that in respect of Excursions, there are no problems arising from the provisions of clause 11.2(b)(ii) of the Exposure Draft; also, the wording of the current instrument should be maintained; and, overtime is not payable for work in excess of ordinary hours while on excursions.

The ASU refers to the *Community Employment, Training And Support Services Consolidated Award 1996* (the pre-reform instrument). Clause 18.9 provided:

**18.9.2** Accrual of time in lieu of overtime payment equivalent to the number of hours worked between 6.00 a.m. and 8.00 a.m. plus the number of hours worked between 6.00 p.m. and 10.00 p.m, Monday to Sunday, plus the number of hours worked in excess of eight hours per day between 8.00 a.m. and 6.00 p.m. Provided that:

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**18.9.2(a)** time in lieu accrued on a public holiday shall be equivalent to twice the number of hours worked; and,

**18.9.2(b)** where on any one day a sleepover allowance is paid in accordance with 15.5, the amount of time in lieu accrued shall not exceed eight hours, or sixteen hours in the case of a public holiday.

**18.9.3** In addition to time in lieu accrued in accordance with 18.9.2 hereof, where an employee involved in overnight excursion activities is required to work on a Saturday and/or Sunday, then days worked by the employee in the weeks immediately before and after the weekend shall not exceed ten inclusive of the weekend days worked.

The ASU proposes in the first instance, that the clause should clarify that overtime is compensable in the absence of the former time in lieu of overtime provisions. The Employers have submitted differing views; thus, Item 8. should be referred for conferencing to determine the clarity required for the Excursions provision.

Items 11. & 12.

In their submissions, the Employer parties have put differing views. The ASU proposes in the first instance, that conferencing is required to ventilate the appropriate penalties payable at clauses 14.2(c) and 20.2.

Yours faithfully



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