

## IN THE FAIR WORK COMMISSION

**Matter No.:** AM2015/16 Plain Language – Reasonable overtime



### **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.

**Lodged by: Abha Devasia**

AMWU National Research Centre

**Address for Service:** Level 3, 133

Parramatta Rd, Granville NSW 2142

Telephone: +61 2 8868 1500

Fax: +61 2 9897 9275

Email: [abha.devasia@amwu.org.au](mailto:abha.devasia@amwu.org.au)

## Introduction

1. On 29 October 2018, the Full Bench of the Fair Work Commission issued a Decision (29<sup>th</sup> October Decision) determining the reasonable overtime model term<sup>1</sup>. In the decision the Full Bench said:

*[25] Draft variation determinations will now be published. Our provisional view will only be displaced in respect of any particular award if it is demonstrated that there are matters or circumstances particular to that award which compel the conclusion that the achievement of the modern award objective for that award does not necessitate the variation of the award to insert the model term. One such matter may be the interaction between the model term and other provisions in that award.*

2. On 16 November 2018 the Full Bench issued a statement along with the publication of draft determinations for awards listed in Attachment A of the statement.<sup>2</sup> These submissions will address the inclusion the model clause in relation to the following awards included in Attachment A.
  - a) The Manufacturing and Associated Industries and Occupations Award 2010
  - b) Graphic Arts, Printing and Publishing Award 2010
  - c) Building and Construction General on-site Award 2010
  - d) Timber Industry Award 2010
3. In respect of the Building Construction and the Joinery Award, we support the submissions of the CFMEU General Division.

### **Variation of the Model Term**

4. These submissions are relevant to all four of the awards identified above. The AMWU submits that the words “other than a casual” be deleted from sub paragraph (a) in each of the draft determinations.

---

<sup>1</sup> [\[2018\] FWFCB 6680](#)

<sup>2</sup> [\[2018\] FWCFB 7006](#)

5. In the 29<sup>th</sup> October decision the Full Bench observed that the issue of whether s62 applies to casual employees would be explored when the draft determinations for the relevant awards were settled.<sup>3</sup>
6. The AMWU submits that the current overtime provisions in all four of the awards in the table below apply to casual employees.

Award	Category of employee	Overtime provisions
Manufacturing Award	Clause 14.1	Clause 40.2 – states that overtime rates are payable to employees for all work outside ordinary hours in any day or shift
Graphic Arts Award	Clause 12.1 and 12.4(a)	Clause 33.2 states the rates payable for employees working overtime.
Timber Industry Award	Clause 12.2	30.1 states the rates payable to employees for overtime hours.

7. None of the awards specified in the table above excludes casuals as a category of employee from the current overtime provisions. The words “other than a casual” should be deleted from the reasonable overtime clause set out in the draft determinations. This is consistent with the general proposition that casual employees receive overtime payments in circumstances where full time or part time employees would be paid overtime payments.

### **Legislative framework**

8. Section 62 of the Fair work Act (the Act) does not contain an exclusion that applies to casual employees. The words “other than a casual” would effectively exclude casuals from s62 of the Act, which is not permissible under s55 of the Act.

---

<sup>3</sup> [\[2018\] FWFCB 6680 at \[23\]](#)

9. In considering the interaction between s62(1) and section 55 the Full Bench, when determining that it should vary the *Seagoing Industry Award* to ensure it does not contravene the NES by requiring certain employees to work 40 hours a week, said:

*“We consider that such a fair and relevant safety net should provide for ordinary weekly hours consistent with the standard established by 62(1), and that consistent with standard practice overtime penalty rates should be payable for hours worked in addition to ordinary hours”<sup>4</sup>*

10. The words “other than a casual” would exclude casual employees from NES and should not be retained in the draft determinations for each of the awards above.

**END**

**28 November 2018**

---

<sup>4</sup> [2018] FWCFB 129 at [13]