



10 October 2019

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Dear Associate

AM2017/51 - OVERTIME FOR CASUALS

As you would be aware, we act for ABI and NSWBC in relation to the above proceedings.

We refer to the Summary Table filed by our clients on 5 July 2019 regarding casual loadings applying to overtime work in relation to a number of awards. We also refer to the Report-Back scheduled for tomorrow, 11 October 2019.

Since 5 July 2019, our office has consulted extensively with a number of parties and our clients' membership and we have refined our clients' positions with respect to the treatment of casual loadings during overtime in a number of awards.

Based on these discussions and a further review of the relevant award positions, we identify in tables below our clients' positions regarding how the casual loading operates with respect to overtime.

The tables are split into four main categories:

1. Those awards where, to the best of our understanding, our clients' positions will not be disputed if the exposure drafts reflect the approach set out by our clients.
2. Those awards where our clients' positions have not been agreed to by union parties.
3. Those awards discussions remain ongoing with AiG/AFEI/AWU/AMWU regarding whether any agreement can be reached.
4. Those awards where our clients are still reviewing their positions with respect to the treatment of the casual loading.

1. AGREED POSITIONS

- 1.1 In relation to the awards listed in the table below, our clients understand that if the new exposure drafts reflect the interpretation set out below, such drafting would not be opposed by any party.
- 1.2 Our clients consider that these awards can be removed from the list of awards receiving further attention by the Commission as part of proceedings AM2017/51.

| Modern Award | Is casual loading payable on overtime? | If payable, is the loading cumulative of compounding? | Comments re: agreement |
|---|---|--|--|
| <i>Airline Operators Ground Staff Award 2010</i> | Payable | Cumulative | Agreed with AWU, AMWU AiG do not oppose exposure draft reflecting this approach |
| <i>Asphalt Industry Award 2010</i> | Payable | Compounding | Agreed with AWU AiG do not oppose exposure draft reflecting this approach |
| <i>Building and Construction General On-Site Award 2010</i> | Payable | As specified in cl. 14.6 | Agreed with AWU , AMWU and AFEI AiG do not oppose exposure draft reflecting this approach |
| <i>Cement and Lime Award 2010</i> | Payable | Cumulative | Agreed with AWU AiG do not oppose exposure draft reflecting this approach |
| <i>Cemetery Industry Award 2010</i> | Payable | Cumulative | Agreed with AWU and AFEI |
| <i>Concrete Products Award 2010</i> | Payable | Cumulative | Agreed with AWU AiG do not oppose exposure draft reflecting this approach |
| <i>Cotton Ginning Award 2010</i> | Not Payable | - | Agreed with AWU AiG do not oppose exposure draft reflecting this approach |
| <i>Electrical Power Industry Award 2010</i> | Not Payable | - | Agreed with AWU, AMWU AiG do not oppose exposure draft reflecting this approach |
| <i>Food, Beverage and Tobacco Manufacturing Award 2010</i> | Payable | Compounding | Agreed with AWU, AMWU and AFEI AiG do not oppose exposure draft reflecting this approach |
| <i>Funeral Industry Award 2010</i> | Payable | Cumulative | Agreed with AWU and AFEI |
| <i>Gardening and Landscaping Services Award 2010</i> | Payable | Cumulative | Agreed with AWU |
| <i>Gas Industry Award 2010</i> | Payable | Cumulative | Agreed with AWU AiG do not oppose exposure |

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|---|---|-----------------------------|---|
| | | | draft reflecting this approach |
| <i>Hair and Beauty Industry Award 2010</i> | Payable | Cumulative | Agreed with AWU AiG do not oppose exposure draft reflecting this approach |
| <i>Higher Education Industry - General Staff Award 2010</i> | For general staff - either casual loading or overtime apply; not both | - | Group of 8 correspondence filed 5 August 2019 identifies consent position |
| <i>Horse and Greyhound Training Award 2010</i> | Payable | Compounding | Agreed with AWU AiG do not oppose exposure draft reflecting this approach |
| <i>Horticulture Award</i> | Payable | Cumulative | Agreed with AWU and NFF AiG do not oppose exposure draft reflecting this approach |
| <i>Hydrocarbons Industry (Upstream) Award 2010</i> | Payable | Cumulative | Agreed with AWU |
| <i>Joinery and Building Trades Award 2010</i> | Yes | As specified in clause 12.6 | As agreed with AiG, HIA, CFMMEU |
| <i>Local Government Industry Award 2010</i> | No | - | See ASU correspondence dated 2 July 2019 See LGA Submissions 28 June 2019 |
| <i>Manufacturing and Associated Industries and Occupations Award 2010</i> | Payable | Compounding | Agreed with AWU, AMWU and AFEI AiG do not oppose exposure draft reflecting this approach |
| <i>Mobile Crane Hiring Award 2010</i> | Yes | As specified in clause 10.3 | Agreed with HIA and CFMMEU AiG do not oppose exposure draft reflecting this approach |
| <i>Nursey Award 2010</i> | Payable | Cumulative | Agreed with AWU and AFEI |
| <i>Pastoral Award 2010</i> | Payable | Cumulative | Agreed with AWU, AFEI and NFF |
| <i>Pest Control Industry Award 2010</i> | Payable | Cumulative | Agreed with AWU and AFEI |
| <i>Premixed Concrete Award 2010</i> | Payable | Cumulative | Agreed with AWU AiG do not oppose exposure draft reflecting this approach |
| <i>Quarrying Award 2010</i> | Payable | Cumulative | Agreed with AWU and AFEI AiG do not oppose exposure draft reflecting this approach |
| <i>Racing Clubs Event Award 2010</i> | Payable | Cumulative | Agreed with AWU |
| <i>Racing Industry Ground Maintenance Award 2010</i> | Payable | Cumulative | Agreed with AWU AiG do not oppose exposure draft reflecting this approach |
| <i>Seafood Processing Award</i> | Payable | Compounding | Agreed with AWU, AMWU |

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|--|--|--|--|
| 2010 | | | AiG do not oppose exposure draft reflecting this approach |
| <i>Silviculture Award 2010</i> | Payable | Cumulative | Agreed with AWU |
| <i>Storage Services and Wholesale Award 2010</i> | Payable | Cumulative | Agreed with AWU AiG do not oppose exposure draft reflecting this approach |
| <i>Sugar Industry Award 2010</i> | Payable | Cumulative | Agreed with AWU, AMWU and NFF AiG do not oppose exposure draft reflecting this approach |
| <i>Surveying Award 2010</i> | Yes | Cumulative | Agreed with AMWU and AFEI |
| <i>Waste Management Award 2010</i> | Payable | Cumulative – 10% | Agreed with AWU, AMWU and TWU AiG do not oppose exposure draft reflecting this approach |
| <i>Wine Industry Award 2010</i> | Payable only on Sundays and Public Holiday | Cumulative, but only on Sundays and Public Holiday | Agreed with AWU and SAWIA |

2. NOT AGREED POSITIONS

- 2.1 The table below outlines our clients' positions where no consent has yet been provided to the approach adopted by our clients.
- 2.2 This does not mean that all of the interpretations listed below are in contest (although some certainly are). In relation to a number of the awards listed below, we have simply not heard back from other parties to date.

| Modern Award | Is casual loading payable on overtime? | If payable, is the loading cumulative of compounding? |
|--|--|---|
| <i>Aircraft Cabin Crew Award 2010</i> | Yes | Cumulative |
| <i>Animal Care and Veterinary Services Award 2010</i> | Yes | Cumulative |
| <i>Architects Award 2010</i> | No | - |
| <i>Banking, Finance and Insurance Award 2010</i> | Yes | Cumulative |
| <i>Black Coal Mining Industry Award 2010</i> | No | - |
| <i>Broadcasting, Recorded Entertainment and Cinemas Award 2010</i> | Yes | Cumulative |
| <i>Business Equipment Award 2010</i> | No | - |
| <i>Car Parking Award 2010</i> | Yes | Cumulative |
| <i>Children's Services Award 2010</i> | Yes | Cumulative |
| <i>Clerks - Private Sector Award 2010</i> | Yes | Cumulative |

| | | |
|---|-------------------------------------|--------------------------------------|
| <i>Commercial Sales Award 2010</i> | Yes | Cumulative |
| <i>Contract Call Centres Award 2010</i> | No | Not payable |
| <i>Fast Food Industry Award 2010</i> | Yes | Rate is specified as per 26.1 |
| <i>General Retail Industry Award 2010</i> | Yes | Rate is specified as per clause 29.2 |
| <i>Graphic Arts, Printing and Publishing Award 2010</i> | Yes | Compounding |
| <i>Health Professionals and Support Services Award 2010</i> | Yes | Cumulative |
| <i>Labour Market Assistance Industry Award 2010</i> | No | - |
| <i>Legal Services Award 2010</i> | Yes | Cumulative |
| <i>Live Performance Award 2010</i> | Yes | Cumulative |
| <i>Market and Social Research Award 2010</i> | No overtime for casuals | - |
| <i>Mannequins and Models Award 2010</i> | No ABI/NSWBC interest in this award | - |
| <i>Meat Industry Award 2010</i> | No | - |
| <i>Oil Refining and Manufacturing Award 2010</i> | No | - |
| <i>Plumbing and Fire Sprinklers Award 2010</i> | Yes | Cumulative |
| <i>Poultry Processing Award 2010</i> | No | - |
| <i>Rail Industry Award 2010</i> | No ABI/NSWBC interest in this award | |
| <i>Real Estate Industry Award 2010</i> | Yes | Compounding |
| <i>State Government Agencies Award 2010</i> | No ABI/NSWBC interest in this award | |
| <i>Telecommunications Services Award 2010</i> | No | - |
| <i>Textile, Clothing, Footwear and Associated Industry Award 2010</i> | Yes | Cumulative |
| <i>Transport (Cash in Transit) Award 2010</i> | No | - |
| <i>Travelling Shows Award 2010</i> | No | - |
| <i>Water Industry Award 2010</i> | No | - |
| <i>Wool Storage, Sampling and Testing Award 2010</i> | No | - |

3. AWARDS WHERE NSWBC/ABI/AIG/AFEI/AMWU AND AWU REMAIN IN DISCUSSIONS

3.1 The table below outlines our clients' positions with respect to those awards that are the subject of ongoing discussions with AiG, AFEI, AMWU and the AWU:

| Modern Award | Is casual loading payable on overtime? | If payable, is the loading cumulative of compounding? |
|--|--|---|
| <i>Aluminium Industry Award 2010</i> | No | - |
| <i>Amusement, Events and Recreation Award 2010</i> | No | - |
| <i>Mining Industry Award 2010</i> | No | - |
| <i>Pharmaceutical Industry Award 2010</i> | No | - |
| <i>Salt Industry Award 2010</i> | No | - |

4. AWARDS WHERE ABI/NSWBC CONTINUE TO REVIEW THEIR POSITION

| Modern Award | Is casual loading payable on overtime? | If payable, is the loading cumulative of compounding? |
|---|---|---|
| <i>Airport Employees Award 2010</i> | No ABI/NSWBC interest in this award. Other parties to confirm their position | |
| <i>Coal Export Terminals Award 2010</i> | No ABI/NSWBC interest in this award. Other parties to confirm their position | |
| <i>Educational Services (Post-Secondary Education) Award 2010</i> | No overtime payable for teaching staff General staff position still being reviewed | Position to be confirmed |
| <i>Supported Employment Services Award 2010</i> | Yes | Position to be confirmed |

5. NEXT STEPS

5.1 Based on the positions outlined above, we consider that the proceedings could most efficiently be progressed as follows:

- (a) The Awards listed in section 1 of this letter be removed from the list of awards being considered by these proceedings on the basis that there is agreement as to the how the Awards should operate and this agreement can influence the exposure drafting process. The Commission might wish to provide any interested parties with a 7-day period to indicate any opposition to this course of action with respect to any of the named awards.

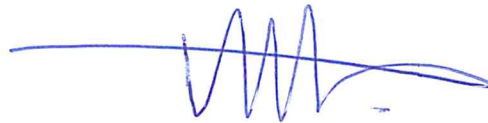
- (b) A further period should be allowed for the parties to confirm their positions with respect to the Awards listed in sections 2 to 4 of this letter, so that any further consent positions can be notified to the Commission and removed from the proceedings.
- (c) The balance of award interpretations that remain in contest will likely need to be determined by way of a hearing.

Should you have any queries in relation to the above, please do not hesitate to contact us.

Yours sincerely



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