

**Email**

5 August 2019

Four Yearly Review of Modern Awards  
Fair Work Commission

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Dear Sir/Madam

**RE: Overtime For Casuals: Higher Education Industry - General Staff - Award 2010 MA000007**

We refer to the statement of the Commission dated 4 December 2017 [2017] FWCFB 6417 (**Statement**) and to the directions/report back before the Full Bench on Monday 29 July 2019.

As noted at the report back, subject to instructions, the University employers and NTEU representatives had substantive in-principle agreement on a variation to address the issue of ambiguity or deficiency in relation when casuals are eligible for overtime penalty rates and the interaction between the penalty rate and casual loading.

In accordance with the Full Bench directions dated 30 July 2019, that agreed position is reflected in the attached updated draft variation which is filed jointly by our clients, the AHEIA and NTEU and takes into account the comments of the Bench and adopts the clear position previously applying under the relevant pre-reform awards, noting that:

1. the main pre-reform awards, being the Higher Education Workers Victoria Award 2005 (clause 13 and Schedule C) and the Higher Education General and Salaried Staff (Interim) Award 1989 (clause 6B and Schedule E), both of which were amended in 2004, contained a provision as follows, which applied as at 31 December 2009, clearly setting out eligibility for overtime payments and their calculation as follows:

*OVERTIME FOR GENERAL STAFF*

*Overtime is only payable to casual general staff in respect of work in excess of 20 per cent of the ordinary weekly hours of an equivalent full time employee, on one day. In respect of such excess, the employee shall receive the greater of the overtime rate that would apply to overtime worked on that day by an equivalent full time employee or the casual loading, but not both.*

2. these provisions were inserted by a Full Bench on 7 July 2004 (PR948455, PR 948447);
3. the employer and union parties both proposed its inclusion in the Modern Award in the course of the proceedings for the making of that award. However, it appears that the provision was inadvertently omitted in the making of the Award.

Accordingly, the attached variation reflects the pre-reform award provisions and it addresses the issues raised in the Statement regarding ambiguity or uncertainty as to whether an overtime penalty rate is payable to casuals, when it is paid, and at what rate it is paid.

The Group of Eight, together with AHEIA members constitute all 39 of the public universities in Australia.

Yours sincerely

Fair Work Commission

5 August 2019

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## DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

### **4 yearly review of modern awards - Award flexibility** (AM2017/51)

### **HIGHER EDUCATION INDUSTRY - GENERAL STAFF - AWARD 2010** [MA000007]

Educational services

VICE PRESIDENT HATCHER  
DEPUTY PRESIDENT KOVACIC  
DEPUTY PRESIDENT BULL

MELBOURNE, XX 2019

*4 yearly review of modern awards - overtime for casuals.*

1. Further to the Full Bench statement issued by the Fair Work Commission on 4 December 2017, the above award is varied as follows.
2. By Inserting a new clause 12.2:  
**12.2** The casual loading and any other applicable overtime or penalty rate are not cumulative. Where a casual employee is entitled to more than one overtime or penalty rate or loading, the employee will be entitled to the highest applicable single penalty rate or loading.
3. By inserting at the end of clause 23 - 'Overtime'" the following:  
**23.2** A casual employee will be paid overtime only in respect of work in excess of 20 per cent of the ordinary hours of an equivalent full time employee, on one day. In respect of such excess, the employee shall receive the greater of the overtime rate that would apply to overtime worked on that day by an equivalent full time employee or the casual loading, but not both.

VICE PRESIDENT