

IN THE FAIR WORK COMMISSION

Matter No: AM2017/51 – Overtime for Casuals



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.

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Introduction

1. On 04 December 2017, a Full Bench of the Fair Work Commission (**the Commission**) published a Statement [2017] FWCFB 6417 (**the Statement**) indicating that the Commission's research area has identified awards where there is potential ambiguity in respect of a casual employee's entitlement to overtime and related matters.
2. Attachment A to the Statement is a table that identifies whether an award unclear with regards the following matters:
 - i. As to whether overtime is payable to casuals;
 - ii. When overtime commences; and
 - iii. At what rate overtime is payable.
3. The Full Bench directed interested parties to provide responses to the statement and table, and, where applicable draft determinations.¹
4. The Australian Manufacturing Workers' Union (**AMWU**) makes the following submission in response to the Statement and the Attachment.
5. The AMWU supports and adopts the submissions of the Australian Council of Trade Unions in this matter, except where otherwise indicated.

AMWU Awards

6. The AMWU has an interest in the following awards listed in Attachment A:
 - i. *Airline Operations – Ground Staff Award 2010* (**Airline Operations Award**);
 - ii. *Black Coal Mining Industry Award 2010* (**Black Coal Award**);
 - iii. *Building and Construction General On-Site Award* (**Building and Construction Award**);
 - iv. *Clerks – Private Sector Award 2010* (**Clerks Award**);
 - v. *Electrical Power Industry Award 2010* (**Electrical Power Award**);
 - vi. *Food, Beverage and Tobacco Manufacturing Award 2010* (**Food Award**);

¹ [2017] FWCFB 6417[6].

- vii. *Graphic Arts, Printing and Publishing Award 2010 (Graphic Arts Award);*
- viii. *Joinery and Building Trades Award 2010 (Joinery Award);*
- ix. *Manufacturing and Associated Industries and Occupations Award 2010 (Manufacturing Award);*
- x. *Seafood Processing Award 2010 (Seafood Award);*
- xi. *Sugar Industry Award 2010 (Sugar Award);*
- xii. *Surveying Award 2010 (Surveying Award);*
- xiii. *Vehicle Manufacturing Repair Service and Retail Award 2010 (Vehicle Award);* and
- xiv. *Water Industry Award 2010 (Water Award).*

Casual Employee's Entitlement to Overtime

- 7. There is no reason to read an exclusion of an entitlement for casuals into an award.
- 8. It follows as a general principle that all casual employees are entitled to overtime payments, unless otherwise expressly excluded.
- 9. We have reviewed the above awards, and do not consider that in any there is any ambiguity that casual employees are entitled to overtime in each instance.

When Overtime Commences; What Rate Overtime is Payable At

- 10. The AMWU is of the view that in relation all of the awards named modern awards that the AMWU has an interest in there is no ambiguity in relation to:
 - i. When overtime commences; or
 - ii. At what rate overtime is payable to a casual.
- 11. Of course there are examples in modern awards where the drafting in respect of the above issues could be made clearer, as identified in the Fair Work Ombudsman Report (**FWO Report**).²
- 12. The AMWU is of the view however, that many of the issues canvassed in the statement and attachment can and have been dealt with in the award stage

² FWO Research Paper 11 April 2014.

of the review process, or are still being dealt with, in the case of those awards that are yet to be finalised.

13. By way of example, one of the recommendations of the FWO report is to include pay rates tables that specify a dollar amount for base hourly rates of pay, casual rates of pay, overtime and penalties.³ This approach has been adopted and such tables included in the exposure drafts of the vast majority of awards.
14. It is the view of the AMWU that the inclusion of wage rate tables in modern awards will remove any ambiguities in relation to when overtime commences and at what rate it is payable for casual employees.
15. The AMWU remains of the view that any ambiguity is best dealt with through the Exposure Draft process. Nonetheless, the AMWU provides a response to the Commission's statement in respect of the Awards that the AMWU has an interest in.

Response to the Statement

16. As identified in [4] of this submission, the AMWU has a substantial interest in many of the Awards identified by the Commission as potentially ambiguous in the Statement⁴.
17. Our position in respect of the following awards is.
 - i. In respect of the Black Coal Award, we support the submissions of the CFMEU Mining and Energy Division.
 - ii. In respect of the Building and Award and the Joinery and Building Trades Award 2010, we support the submissions of the CFMEU General division.
 - iii. In respect of the Electrical Power Award, we support the submissions of the Electrical Trades Union (CEPU).
 - iv. In relation to the Repair Service and Retail part of the Vehicle Award 2010, the AMWU supports the position agreed with the SDA and MTA that this issue should not be looked at until after the review of the Vehicle Award is complete. However, in relation to Vehicle Manufacturing part of the Award, our comments are below in the table.
18. The AMWU's position in relation to all other Awards in which we have an interest is set out in the table below.

³ Ibid page 7 paragraph 37.

⁴ [2017] FWCFB 6417[6]

AM2017/51 Table of modern awards that the AMWU has an interest in

Award	Is overtime payable to Casuals?	When does overtime commence?	What rate is the overtime payable at?	Comment
<p>Airline Operations – Ground Staff Award 2010</p>	<p>Yes, there is nothing in the award that excludes casuals from receiving overtime penalties.</p>	<p>This is outlined by clauses 32.1(a) (which states that overtime is payable for hours outside the ordinary hours fixed at the enterprise) and clause 32.1(d) which states that when computing overtime, each day stands alone. Thus when read in its entirety, clause 32.1 makes it clear that overtime rates are payable for a casual for all hours worked above 7.6 hours in any given day.</p>	<p>Clause 32 .1(a) makes it clear that the rate for working overtime is time and half of the first two hours and double time thereafter.</p> <p>Clause 11.5 requires the casual loading to be paid for all hours worked. So when working overtime it is clear that under this award, employees are entitled to both the casual loading and the penalty rate.</p>	<p>The entitlement is clear and no amendments to this award are necessary. Therefore it should be removed from the list</p>
<p>Food, Beverage and Tobacco Manufacturing Award 2010</p>	<p>Yes, there is nothing in the award that excludes casuals from receiving overtime penalties.</p>	<p>This is outlined in clauses 33.1(a) which states that overtime is payable for is payable for all overtime worked outside the ordinary hours fixed at the enterprise. Clause 33.(c) states that when computing overtime, each day is to stand alone. Therefore when read in</p>	<p>Clause 33.1(a) sets out the overtime penalty rates in this award. Clause 13.1 states that <i>“The (casual) loading constitutes part of the casual employee’s all purpose rate.”</i></p> <p>This makes it clear that the proper</p>	<p>The entitlement is clear and no amendments to this award are necessary. Therefore it should be removed from the list</p>

		its entirety, clause 33.1 makes it clear that overtime rates are payable for a casual employee for all hours worked above 7.6 hours on any given day.	calculation in this award is the compounding calculation, and that the applicable overtime penalty is to be worked out on the casually loaded rate.	
Graphic Arts, Printing and Publishing Award 2010	Yes, there is nothing excluding casuals from the payment of overtime penalties.	This is specified in clause 33.2 which states that all work performed by an employee in excess of or outside the ordinary hours of work fixed at that enterprise. Clause 30.2(b) makes it clear that ordinary hours cannot exceed 8.75 hours per day.	Clause 33.2 states that the rate payable for an employee working overtime is time and a half for the first three hours and double time thereafter. Considering clause 12.4(a) states that the casual loading forms part of a casual employee's all purpose rate, it is clear casual employees are entitled to receive the <i>compounding</i> calculation in this award, and that therefore, the overtime penalties at 33.2 are calculated based on the casually loading rate at 12.4(a).	The entitlement is clear and no amendments to this award are necessary. Therefore it should be removed from the list
Manufacturing and Associated Industries and Occupations Award 2010	Yes, there is nothing excluding casuals from the payment of overtime penalties.	This is outlined by clauses 40.1(a) which states that overtime is rates are payable for all work outside ordinary hours on any day or shift. Clause 36.2(d) indicates that overtime	Clause 40.1 states that the rate is time and a half for the first three hours and double time thereafter. Clause 14.1 states that the casual loading is payable for all purposes. Therefore, it is clear that casual employees working overtime are entitled to receive the	The entitlement is clear and no amendments to this award are necessary. Therefore it should be removed from the list

		<p>rates are also payable for work performed outside of the spread of ordinary hours.</p> <p>Clause 40.1(e) states that when computing overtime, each day is to stand alone.</p> <p>This makes it clear that overtime is calculated on a daily or weekly basis.</p>	<p><i>compounding</i> calculation in this award, and that therefore, the overtime penalties at 40.1 are calculated on the casually loaded rate.</p>	
<p>Oil Refining and Manufacturing Award 2010</p>	<p>Yes, there is nothing excluding casuals from the payment of overtime penalties.</p>	<p>This is outlined by clauses 10.3(a), 10.3(b) and 24. Any hours worked over 35 hours a week (or a lesser amount if that is what is required by the employer) is overtime. Each day's overtime is calculated separately, so any time worked over 7 hours a day in a 5 day week is overtime (unless fewer hours are agreed for the average).</p>	<p>The rate is outlined by clauses 10.3(b), 10.3(d) and 24. The casual loading is paid for all hours worked and so therefore it is clear that a casual employee working overtime is entitled to both the overtime penalty and the casual loading.</p>	<p>The entitlement is clear and no amendments to this award are necessary. Therefore it should be removed from the list</p>
<p>Seafood Processing Award 2010</p>	<p>Yes, there is nothing excluding casuals from the payment of overtime penalties.</p>	<p>This is outlined in clause 26.1(a) which states that overtime is payable for all work done outside ordinary hours.</p> <p>Clause 26.1(e) states that when computing overtime, each day stands</p>	<p>Clause 12.1 states that the casual loading forms part of the casual employee's all purpose rate.</p> <p>Therefore it is clear that casual employees working overtime are entitled to the</p>	<p>The entitlement is clear and no amendments to this award are necessary. Therefore it should be removed from the list</p>

		alone. Therefore it is clear that overtime is payable for all work performed that isn't ordinary hours as defined in clause 23.2 is overtime, and that when working overtime, each day stands alone.	<i>compounding</i> calculation and that any applicable overtime penalties payable in accordance with clause 26.1(a) are to be calculated on the casually loaded rate.	
Sugar Industry Award 2010	Yes, there is nothing excluding casuals from payment penalties.	This is specified in clause 11.3(a), and 31. Any hours worked over 38 hours are overtime. Clause 31(a) states that the overtime penalties are to be calculated on a daily basis. Therefore each day's overtime is calculated separately, so any time worked over 7.5 hours a day in a 5 day week is overtime.	The rate payable is specified in clauses 11.3(a) and 31. (a) (i) and (ii). The overtime rate is paid is calculated on the ordinary hourly rate, which is the casually loaded rate.	The entitlement is clear and no amendments to this award are necessary. Therefore it should be removed from the list
Surveying Award 2010	Yes, there is nothing excluding casuals from the payment of overtime penalties.	Clause 23 states that an employer must compensate an employee for all work performed in excess of normal hours of duty.	Clause 11.2(a) effectively states that the casual loading must be payable for all hours worked. Therefore, when working overtime, casual employees are entitled to both the overtime rate and the casual loading.	The entitlement is clear and no amendments to this award are necessary. Therefore it should be removed from the list
Water Industry Award 2010	Yes, there is nothing excluding casuals and clause 10.5(c) makes provision for	This is outlined by clauses 26 and 10.5. Clause 26.1 sets all work subject to overtime. Each day's overtime is	The rate is set out in clause 10.5(c).	The entitlement is clear, and therefore no amendments to the

	overtime for casuals.	calculated separately. (Clause 26.1(g)).		Award are necessary.
Waste Management Industry Award 2010	Yes, there is nothing excluding casuals from the payment of overtime penalties.	<p>Clause 30.1 states that all work performed outside ordinary hours must be paid at overtime rates.</p> <p>Clause 30.2 states that when computing overtime, each day is to stand alone.</p> <p>Clause 27.2 states that ordinary hours of work must not exceed eight hours per day.</p> <p>Therefore it is clear that under this award, employees are entitled to overtime for all hours worked outside ordinary hours in any day, and that overtime is calculated on a daily basis.</p>	NA	The entitlement is clear and no amendments to this award are necessary. Therefore it should be removed from the list.
Vehicle Manufacturing Part of the Vehicle Manufacturing, Repair, Service and Retail Award 2010	Yes, there is nothing excluding casuals from the payment of overtime. It is clear which casuals are excluded, and vehicle manufacturing casuals are not.	<p>This is outlined by clause 28, 47 and 53. Any hours worked beyond the 38 hours per week is paid at overtime.</p> <p>Anything over 8 hours per day is overtime, unless there is an agreement for up to 10 ordinary hours per day.</p>	The rate is outlined by clauses 28 and 47. The casual loading is paid as part of the all purpose rate. This means the overtime penalties at 28 are calculated based on the casually loaded rate as defined in 47.	The entitlement is clear and no amendments to this award are necessary. Therefore it should be removed from the list

END
19 January 2018