



**A•S•U**  
Australian Services Union

## **Response to Statement**

### **s.156 - 4 yearly review of modern awards**

Airline Operations-Ground Staff Award 2010 [MA000048]

Business Equipment Award 2010 [MA000021]

Clerks—Private Sector Award 2010 [MA000002]

Labour Market Assistance Industry Award 2010 [MA000099]

**AM2017/51**

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1. The Fair Work Commission (the Commission) published a Statement ([2017] FWCFB 6417) on 4 December 2017 into potential ambiguity as to when casual employees' overtime entitlements arise.
2. The ASU files this written response in regard to the:
  - Airline Operations-Ground Staff Award 2010 [MA000048]
  - Business Equipment Award 2010 [MA000021]
  - Clerks—Private Sector Award 2010 [MA000002]
  - Labour Market Assistance Industry Award 2010 [MA000099]
3. The ASU also refers to the Office of the Fair Work Ombudsman's research paper *Research Paper on the Expression of Rates of Pay, Overtime and Penalty Rates in Modern Awards*.
4. The ASU notes that neither of the three Modern Awards cited above contain clauses in respect of overtime entitlements for casual employees in terms of the clauses cited as preferred examples in the *Research Paper on the Expression of Rates of Pay, Overtime and Penalty Rates in Modern Awards*.
5. The ASU position in regard to the three awards is set out below.

*Airline Operations-Ground Staff Award 2010*

6. Under clause 11.5 of the Airline Operations-Ground Staff Award 2010 a casual employee *must be paid per hour at the rate of 1/38th of the weekly rate prescribed for the class of work performed, plus 25%. This loading is instead of entitlements to leave and other matters from which casuals are excluded by the terms of this award and the NES.*
7. Clause 32.1, payment for working overtime, provides that *all work done outside ordinary hours on any day or shift (except where the time is worked by arrangement between the employees themselves) must be paid at time and a half for the first two hours and double time thereafter until the completion of the overtime work. For a continuous shiftworker the rate for working overtime is double time.*
8. Casual employees are not excluded from clause 32 and so the overtime provisions are prescribed for casual employees in the same terms as for dayworkers and shiftworkers. (Double time is paid for continuous shiftwork).

*Business Equipment Award 2010*

9. Under clause 13.2 of the *Business Equipment Award 2010* a casual employee is one engaged and paid as such, and for working ordinary time will be paid, per hour, 1/38th of the weekly wage prescribed by this award for the work which the employee performs, plus 22%.. Under clause 20.2(c) for the purposes of ascertaining weekly wage rates for each classification (as referred to in various clauses of this award, e.g. casual employment, part-time employment) the salaries in clause 20 must be divided by 52.
10. Clause 27— Ordinary Hours of work and Rostering, provides that the ordinary hours of work are an average of 38 per week to be worked by day workers between the hours of 6.30 am to 6.30 pm at the discretion of the employer on any day or all of the days of the week, Monday to Friday.
11. Clause 27.3 provides that where a day worker works part of the ordinary hours outside the spread of hours referred to in clause 27.1 or the spread of hours as varied in accordance with clause 27.2 the employee is entitled to an allowance of 24.7% of the standard hourly rate for each ordinary hour worked outside the spread of hours. Where such ordinary hours are worked after the spread of hours prescribed in clause 27.1, such hours will be limited to a maximum of four days per week.
12. Clause 30.1(a) provides that an employee who works in excess of or outside the employee's ordinary hours established in accordance with clause 27 or clause 28 of this award will be paid at the rate of time and a half for the first three hours and double time thereafter, until the completion of work.
13. Casual employees are not excluded from clause 27 and clause 30 and so the overtime provisions are prescribed for casual employees in the same terms as for dayworkers and shiftworkers.

*Clerks—Private Sector Award 2010*

14. Under clause 12.2 of the *Clerks—Private Sector Award 2010* a casual employee must be paid per hour at the rate of 1/38th of the weekly rate prescribed for the class of work performed, plus 25%. This loading is instead of entitlements

*to leave and other matters from which casuals are excluded by the terms of this award and the NES.*

15. Clause 27.1(a) provides that *work within the spread of ordinary hours on Saturday will be paid at the rate of time and a quarter, all work done on a Sunday must be paid for at the rate of double time and An employee required to work on a Sunday is entitled to not less than four hours' pay at penalty rates provided the employee is available for work for four hours.*
16. Casual employees are not excluded from clause 27 and so the overtime provisions are prescribed for casual employees in the same terms as other employees.

#### *Labour Market Assistance Industry Award 2010*

17. At clause 10.4(c) of the *Labour Market Assistance Industry Award 2010*, a casual employee *will be paid for each hour worked during the ordinary hours of work provided in clause 21—Ordinary hours of work, a rate equal to 1/38th of the weekly rate appropriate to the employee's classification. In addition, a loading of 25% of that rate will be paid.*
18. At clause 10.4(d), when a casual employee is engaged *outside of the ordinary spread of hours provided in clause 21—Ordinary hours of work, the hourly rate (exclusive of the 25% loading) will be increased by the penalty rates provided in clause 23—Overtime and penalty rates.*
19. Clause 21.2 provides that an employee's *ordinary hours of work will be performed between 6.00 am and 8.00 pm Monday to Friday.*
20. Clause 23.1(c) provides that a *casual employee will be entitled to overtime if they work in excess of 38 hours in any one week or greater than 10 hours in any one day.*
21. Overtime rates provided at clause 23.2 are *time and a half for the first two hours of overtime worked and double time thereafter for overtime worked Monday to Saturday; double time for all overtime worked on Sundays; and, for employer approved work on a public holiday the rates are paid in addition to the payment for the public holiday and at the rate of time and a half for work performed during ordinary hours of work; and/or, double time and a half for work performed outside ordinary hours of work.*

22. The penalty rates provided in clause 23.7 are paid to an employee for *working any of their ordinary hours outside the normal spread of hours provided in clause 21.2.*
23. The overtime entitlement for casuals is prescribed at clauses 10.4(d) and 23.1(c); and the provisions for overtime and penalty rates that apply to casuals are prescribed in clauses 23.2 and 23.7.

**Conclusion.**

24. The ASU submits that the Awards are clear as to the conditions for overtime for casuals and variations to the Modern Awards listed above are not required.

**Australian Services Union**

**19 January 2018**