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**IN THE FAIR WORK COMMISSION**

**AM2017/51 – 4 YEARLY REVIEW OF MODERN AWARDS**

**Section 156 – Fair Work Act 2009 – 4 yearly review of modern awards**

**SUBMISSIONS OF THE AUSTRALIAN WORKERS' UNION**

**OVERTIME FOR CASUALS**

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## **BACKGROUND**

1. These submissions of The Australian Workers' Union (AWU) are made pursuant to a Statement published by the Fair Work Commission Full Bench on 4 December 2017 ('Statement').
2. The AWU makes the following submissions in response to paragraphs [6] and [7] of that Statement, noting that an extension has today been granted to all parties to file material by 19 January 2018.

## **SUBMISSIONS**

### **General**

3. The AWU submits that as a general principle, all casual employees should be entitled to overtime rates. This general principle has already been confirmed in the recent Full Bench Decision for the Casual and Part-time Employment case.
4. In terms of the relevant casual overtime rate, the casual loading should be paid either in addition to the overtime penalty rate or included in the overtime calculation on a compounding basis depending on the terms of the relevant award.
5. The AWU believes that in many awards, including a number of awards contained in the table at Attachment A to the Statement, this entitlement is not currently ambiguous.
6. It could be argued that the entitlement is capable of being expressed more clearly in a number of awards, but that is different to an ambiguity concerning whether the entitlement currently exists at all. Given the necessity for an award to be construed in a beneficial manner, a casual employee would have to be clearly excluded from the relevant overtime provisions to be deprived of this standard entitlement.

### **Accuracy of table**

7. The AWU has an interest in well over 50 of the awards listed in the table at Attachment A to the Statement. For many of these awards, The AWU is the principal union affected by the award. The AWU is unable to conduct a review of all of these awards in order to provide feedback concerning the accuracy of the table within the timeframe specified.
8. The AWU has pursued the issue of overtime entitlements for casual employees in a number of awards during this award review process, and we note that some changes have been suggested to these provisions in a number of Exposure Drafts. The table, being based on current award content, does not take into account any of the changes that have been or may be made to an award during the Exposure Draft process that does or will affect the clarity of overtime entitlements for casual employees.
9. The AWU notes that the introduction of the *Summary of Hourly Rates of Pay* schedule into Exposure Drafts has the potential to resolve the '*unclear at what rate overtime is payable*' element of the table for the awards in the table where the

schedule deals comprehensively with the rates of pay that casual employees are entitled to<sup>1</sup>.

#### **Draft determinations**

10. The AWU is unable to draft and file draft determinations for over 50 awards within the timeframe specified.
11. Regardless, The AWU respectfully suggests that such a task may ultimately be a relatively inefficient approach to the resolution of potential ambiguities regarding a casual employee's entitlement to overtime. As stated above, a number of amendments have already been made to the content of current awards throughout the Exposure Draft process that are directly related to this issue.
12. Not least of these amendments is the *Summary of Hourly Rates of Pay* schedule. A comprehensive *Summary of Hourly Rates of Pay* schedule has the potential to effectively remove any ambiguity regarding the rate of overtime payable to a casual employee. As stated above, the Exposure Drafts of some awards already contain a complete schedule. Others currently have incomplete schedules that would benefit from additional information concerning overtime rates for casual employees<sup>2</sup>.
13. A draft determination that references the current award will necessarily not take into account any amendment granted or currently sought in the Exposure Draft process, such as the existence of a new schedule that resolves some of the ambiguities identified. We submit that this may be counterproductive.
14. The AWU supports the resolution of ambiguities in awards where such ambiguities exist, and will maintain involvement in any process that will have an effect on any award that we have an interest in. We merely suggest that this process would benefit from the content of the most recent Exposure Drafts for all awards and we respectfully request that some additional time is dedicated to dealing with this issue and the others identified in these submissions before the filing of any draft determinations.

Yours Sincerely,



Zachary Duncalfe  
**NATIONAL LEGAL OFFICER**  
**The Australian Workers' Union**

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<sup>1</sup> See for example: Sch. A.3 of the Exposure Draft for the *Asphalt Industry Award 2015*.

<sup>2</sup> See for example: Sch. B.6 of the Exposure Draft for the *Airline Operations—Ground Staff Award 2016*.

14 December 2017