

CFMEU

CONSTRUCTION

IN THE FAIR WORK COMMISSION
Matter Number: AM2017/51

Fair Work Act 2009
s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – overtime for casuals
(AM2017/1)

**SUBMISSION OF THE CONSTRUCTION, FORESTRY, MINING AND ENERGY
UNION (CONSTRUCTION & GENERAL DIVISION)**

11th December 2017

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Introduction

1. The Fair Work Commission (the Commission) is currently undertaking a 4 yearly review of modern awards (the Review) as required by s.156 of the *Fair Work Act 2009* (the FW Act). On the 4th December 2017 a Full Bench issued a Statement ([2017] FWCFB 6417) in which the issue of overtime for casuals was identified as an outstanding item in a number of modern awards through the award stage of the Review.¹
2. Attached to the Statement was a table (Attachment A) which identified those awards where casual employees' entitlements to overtime and the interaction the casual loading and overtime rates were not clearly stated. The Full Bench invited interested parties to provide any written response concerning the accuracy of the list of awards in Attachment A by 4pm on Monday 11th December 2017.
3. The CFMEU (Construction & General Division) (CFMEU C&G) makes this brief submission in response to that invitation in regard to the three major awards in which it has an interest, i.e. the *Building and Construction General On-site Award 2010*, the *Joinery and Building Trades Award 2010*, and the *Mobile Crane Hiring Award 2010*. The CFMEU C& G notes that it also has an interest in a number of other awards in Attachment A but, due to the limited time available, is not in a position to provide a response at this time.
4. The only issue identified for the three awards identified above is the suggestion that it is unclear as to when overtime commences. The CFMEU C&G position in regard to the three awards is set out below.

Building and Construction General On-site Award 2010

5. In regard to the *Building and Construction General On-site Award 2010*, the issue of when overtime rates for casuals are to apply is a matter that the CFMEU C&G raised in its submission to the Full Bench dealing with the Construction Awards (AM2016/23). The CFMEU C&G relies on its submission of 9th December 2016² made in those proceedings, particularly paragraphs 191 to 196, in which it was indicated that whilst the CFMEU did not believe any ambiguity existed it proposed a variation to remove any perceived ambiguity or uncertainty.

Joinery and Building Trades Award 2010

¹ [2017] FWCFB 6417 at paragraph [2]

² <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201623-sub-cfmeu-091216.pdf>

6. Under clause 12.6 of the *Joinery and Building Trades Award 2010* a casual employee required to work overtime or on a public holiday is entitled to be paid the penalty rates prescribed in that clause. Under clause 28 – Ordinary Hours of work and Rostering, the ordinary hours of work are 38 or an average of 38 per week to be worked by day workers as either an RDO system Monday to Friday or an alternative method agreed to by the employer and a majority of employees. Under clause 30.2 except for work on weekends and public holidays overtime rates are paid for all work done outside of ordinary hours by a day worker or a shift worker.
7. There is no exclusion for casual employees in either clause 28 or clause 32 of the *Joinery and Building Trades Award 2010*, therefore these clauses apply and overtime rates for casuals commence on the same basis as applies to dayworkers and shiftworkers.

Mobile Crane Hiring Award 2010

8. Similarly under the *Mobile Crane Hiring Award 2010*, clause 11.3(d) provides that a casual employee required to work overtime or on a Saturday, Sunday or public holiday, is entitled to be paid the penalty rates prescribed in that clause. Under clause 22 – Ordinary Hours of Work, the ordinary hours of work are 38 per week, Monday to Friday to be worked by one of the methods provided for in clause 22.2. Under clause 25.2 overtime rates are paid for all work done outside of ordinary hours and on Saturdays. Overtime rates are also payable for work on Sundays (clause 25.3) and on public holidays (25.4). As there is no exclusion for casuals under clause 22 the ordinary hours are determined by this clause and overtime commences on the same basis as applies to other employees.

Conclusion

9. As there is no ambiguity or uncertainty under the *Joinery and Building Trades Award 2010* and the *Mobile Crane Hiring Award 2010*, the two awards should be removed from Attachment A.
