

**IN THE FAIR WORK COMMISSION**

**2014 Award Review**

(AM2017/51)

**Community and Public Sector Union (CPSU) (PSU Group)**

**Submissions re: overtime for casual employment**

**Further response**

1. The CPSU makes these submissions in accordance with the Statement and Directions of 11 December 2019 and in reply to the submissions of Australian Federation of Employers and Industries (AFEI) dated 6 December 2019. The CPSU relies upon its earlier submissions of 6 December 2019 and makes the following additional points in response to AFEI.

***Broadcasting Recorded Entertainment and Cinema's Award ("BRECA")***

2. At [3] of their submissions, the AFEI say the BRECA provides for the casual loading to be applied on a cumulative not compounding basis. They say this is because the casual loading is an amount added on to the minimum rate of pay in clause 10.6(b) of the Award. Therefore, the distinction between the hourly rate and the casual loading meant it did not form part of an all-purpose amount which compounds.
3. The CPSU says this submission should not be accepted. The minimum rate of pay plus the 25% loading 'must be paid' to a casual employee. This amount then forms their ordinary rate of pay, to which for example 'time and a half for the first two hours and double time after that' for work in excess of ordinary hours Monday to Friday is added in clauses 29.2 and 40.1.
4. The CPSU says the AFEI submission regarding clause 10.6(b) of the Award is not in line with the decisions in *Opal Aged Care Decision [2019] FWCFB 1716* and *AWMU v Energy Australia Yallourn [2017] FWCFB 381* referred to in greater detail in our 6 December 2019 submissions.
5. The CPSU also notes its earlier submission regarding clause 29.1 which provides "The hourly rate for overtime purposes is to be calculated by dividing the relevant minimum weekly wage by 38". We said it should be removed from the Exposure Draft because of confusion with the new inclusion of 'ordinary hourly rate' and noting it was not contained in the pre-reform *Television Industry Award 2000*. While clause 29.1 can be read alongside clause 10.6(b), it should nonetheless be removed in the Exposure Draft. Clause 29.1 outlines the basic rate of calculation, while clause 10.6(b) deals more specifically with casuals, requiring them to be paid the minimum hourly rate of pay plus their 25% casual loading. Clause 29.1 relates more particularly to full and part time employees, but not so as to displace clause 10.6(b) dealing casuals.

### ***Contract Call Centres Award and the Telecommunications Services Award***

6. In their submissions regarding the *Contract Call Centres Award* at [8-9] the AFEI say the casual loading is 'expressly confined' to ordinary hours only in clause 13.1 and that the overtime clause makes no reference to the casual loading in clause 26.1. A similar point is made at [16-17] of their submissions regarding the *Telecommunications Services Award*.
7. The CPSU says this submission should not be accepted. It is correct the overtime clause in the award makes no reference to the casual loading, but it also makes no reference to the rate upon which the overtime is paid. Thereby, following the similarly worded clauses considered in *AWMU v Energy Australia Yallourn [2017] FWCFB 381*, the overtime is paid upon the ordinary rate of pay which the casual receives, which includes their casual loading on a compounding basis.

### ***Labour Market Assistance Award***

8. The AFEI submit at [12-13] that the casual loading is expressly confined to ordinary time only, and therefore is not paid on overtime. The CPSU says this submission should not be accepted. Clause 21.2 provides 'the ordinary hours of work will be performed between 6.00 am and 8.00 pm Monday to Friday.' Clause 10.4(d) expressly excludes the payment of the casual loading outside the span of ordinary hours. By implication therefore this means there is no such exclusion during the span of ordinary hours. The construction advanced by AFEI does not have textual support in the Award. The provisions in the award provide for the payment of the casual loading for hours worked within the span of hours, including when those hours are overtime hours as provided in clause 23.1.