

From: Kristin Barlow [<mailto:Kristin.Barlow@cpsu.org.au>]
Sent: Wednesday, 31 January 2018 3:45 PM
To: AMOD
Subject: CPSU submissions in AM2017-51 and request for leave

Dear AMOD team and Associate to Vice President Hatcher.

The CPSU wishes to file submissions in AM2017-51 regarding Overtime and casual employees.

According to the Full Bench Statement of 4 December 2017, as extended, the deadline for these submissions was 19 January 2018.

The CPSU seeks leave to file these submissions after the deadline and apologises for such a late filing, which was due to staff being unavailable over the Christmas and New Year period.

The CPSU does not believe other parties will be disadvantaged by the Commission accepting this submission outside the Directions. We note this is a newly constituted Common Matter as part of the 2014 Review and not all the issues have been aired or discussed between the interested parties yet.

In the event permission is granted, we thank the Commission and attach the CPSU submissions.

Regards,

K.B

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IN THE FAIR WORK COMMISSION

2014 Award Review

(AM2017/51)

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

Submissions re: overtime for casual employment

Introduction

1. On 4 December 2017, the Full Bench of Vice President Hatcher, Deputy President Kovacic and Deputy President Bull issued a Statement regarding the issue of overtime for casuals. That Statement requested a response from interested parties to research from the Fair Work Ombudsman regarding ambiguity about casual employees' entitlement to overtime in 108 modern awards listed in the Statement. That Statement asked interested parties to comment on the accuracy of the list of awards noted as ambiguous and identify any variation sought. The deadline for such submissions was extended to 19 January 2017.
2. The CPSU has an interest in various modern awards and makes these submissions regarding the following modern industry Awards from the list contained in the Statement: the *Airport Employees Award 2010*, the *Contract Call Centre Award 2010*, the *Telecommunications Services Award 2010*, *Broadcasting and Recorded Entertainment Award 2010*, the *Labour Market Assistance Award 2010*, and the *Miscellaneous Award 2010*.

The ACTU submissions

3. The CPSU supports the submissions of the ACTU of 19 January 2017 regarding the eligibility for and payment of overtime for casuals. As a matter of principle, the CPSU believes casual employees should be eligible for overtime payments when they exceed ordinary hours on a day or a week or perform work outside the span of hours. As such the default position should be that casuals are entitled to overtime payments.

Awards listed in the 4 December Statement in which the CPSU has an interest

4. The CPSU does not agree the FWO list of Awards containing ambiguities in the 4 December 2017 Statement is accurate. The CPSU does not propose any draft Determinations at this stage.
5. In the *Airport Employees Award 2010*, casuals are not excluded from overtime and when overtime commences is clearly outlined in Clause 30. Payment of overtime is based upon appropriately weekly rate (30.3) which for casuals would include the casual loading. The CPSU does not believe these provisions are ambiguous.
6. In the *Contract Call Centres Award 2010*, casual employees are not excluded from overtime and would receive it with their overtime payment. When read together, clauses 13, 24 and

26 are clear in when overtime commences for casuals and the CPSU does not agree it is ambiguous.

7. In the *Telecommunications Services Award 2010*, casual employees are not excluded from overtime and the CPSU does not agree this is ambiguous. Clauses 11, 20 and 21, when read together provide for day workers and shift workers, including casuals, to receive overtime and outline when that overtime commences and what the rate of payment is.
8. In the *Broadcasting and Recorded Entertainment Award 2010*, clause 10 deals with the engagement of casuals and requires the payment of a casual loading of 25% of the relevant minimum hourly rate and would include the overtime payment. The CPSU believes that casuals are entitled to overtime and it is not ambiguous for Television Broadcasting, having regarding to clauses 27, 29 and 30 when that overtime commences for casuals. Regarding Radio Broadcasting technical staff, clauses 34, 40 and 42 when read together provide for overtime payments for casuals and are not ambiguous.
9. In the *Labour Market Assistance Award 2010*, casual employees are not excluded from receiving overtime, however clause 10 specifically says that the casual loading is not paid in a situation where the casual is engaged outside the span of hours, but instead they receive penalty rates. The CPSU does not believe this is ambiguous as it clearly excludes the usual position of payment of casual loading and overtime in this situation. The CPSU notes the draft determination of 15 December 2017 of Jobs Australia to vary this award. The CPSU does not support this award variation.
10. In the *Miscellaneous Award 2010*, clause 10 deals with casual engagement and payment of the casual loading. However, clause 22 which deals with overtime and penalties only provides for full-time and part-time employees to have overtime. The CPSU say this approach could be said to be anomalous when compared to other awards as part of the minimum safety net. The Award should provide for casuals to receive appropriate overtime payments.

31 January 2018

CPSU - SYDNEY