

Confidential**Email**

28 October 2019

Four Yearly Review of Modern Awards
 Fair Work Commission
 amod@fwc.gov.au

Dear Madam/Sir

Overtime for Casuals: Higher Education Industry - General Staff - Award 2010 MA000007

1. We act for the Group of Eight universities. We refer to the Statement and Directions issued by Vice President Hatcher on 14 October 2019 in [2019] FWC 7087.
2. The Statement dealt with the issue of overtime for casuals and in part, where there was an agreed position on the meaning of the awards in respect of overtime for casuals (which includes the Higher Education Industry - General Staff - Award 2010) to address ambiguity or uncertainty as to whether an overtime penalty rate is payable to casuals, when it is paid, and at what rate it is paid, that:

It will be necessary for the relevant parties to identify whether the exposure drafts for the first category of awards reflect the commonly-understood position or whether any changes are required. The attached directions establish a timetable by which this is to be done. The Full Bench will separately confirm for itself that the agreed position is consistent with the current text of each award.

3. In accordance with Direction 1, the Group of Eight files this document identifying whether the exposure draft of the *Higher Education Industry – General Staff Award (Exposure Draft)* reflects the commonly-understood position or, if it does not, any textual changes required to the Exposure Draft.
4. The exposure draft **does not** pick up or otherwise adopt the position agreed and previously advised to this Full Bench.
5. On 5 August 2019, we wrote to the Commission identifying an agreed position and attaching a draft variation, which was filed jointly by the Group of Eight, the AHEIA, and the NTEU (**enclosed**). The draft variation proposed amendments to the Award's casual and overtime clauses, which also reflected the pre-reform award position which was jointly supported but had inadvertently not been picked up by the AIRC Full Bench up in the making of the Modern Award when made in 2009.
6. In the Exposure Draft now released the FWC has been reformatted and renumbered the relevant clauses in the award.
7. As such to give effect to the agreed position and consistent with the 5 August 2019 documentation filed with the FWC the following textual changes are required that:
 - (a) clause 12.2 as proposed in the enclosed draft variation should be added as a new clause 12.2 in the Exposure Draft (ie "*The casual loading and any other applicable overtime or penalty rate are not cumulative. Where a casual employee is entitled to more than one overtime or penalty rate or loading, the employee will be entitled to the highest applicable single penalty rate or loading.*"), with subsequent sub-clauses in clause 12 renumbered accordingly;

- (b) clause 23.2 as proposed in the enclosed draft variation should be added as a new clause 22.2 in the Exposure Draft (ie *A casual employee will be paid overtime only in respect of work in excess of 20 per cent of the ordinary hours of an equivalent full time employee, on one day. In respect of such excess, the employee shall receive the greater of the overtime rate that would apply to overtime worked on that day by an equivalent full time employee or the casual loading, but not both.*), with subsequent sub-clauses in clause 22 renumbered accordingly.
- (c) the tables inserted by FWC at B.2.1 and B.2.2 which it inserted as part of the plain English drafting and expressing all rates as hourly rates) is incorrect and reflects adding the casual loading and overtime and other penalties, rather than the greatest single loading applying. The table needs to be reinserted and properly reflect the above position, including with the correct % and rates. Please advise if you require us to provide that content/calculations.
8. If you have any queries regarding this letter, please do not hesitate to contact us.

Yours sincerely



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