

## Overtime entitlements for casuals

Fair Work Commission

Matter No: AM2017/51

## Submissions – Overtime entitlements for casuals

Master Electricians Australia (MEA) is a modern trade association representing electrical contractors. A driving force in the electrical industry and a major factor in the continued success and security of electrical contractors, MEA is recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate.

MEA currently has a membership base of approximately 3000 electrical contractors Australia-wide, the vast majority of which are small businesses with fewer than 20 employees.

**[3] The Fair Work Ombudsman issued a research paper in 2014 concerning the expression of rates of pay, overtime and penalty rates in modern awards. This paper included a table identifying those awards where casual employees' entitlement to overtime and the interaction between the casual loading and overtime rates were or were not clearly stated.**

**[4] Subsequently, the Commission's research area has identified awards in which there is potential ambiguity as to when casual employees' overtime entitlements arise - for example, for hours worked outside the span of hours in the relevant award, or for hours worked in excess of 38 hours per week.**

MEA submits a response in relation to the overtime ambiguity for the Clerks Private Sector Award 2010 and the Electrical, Electronic and Communications Contracting Award 2010.

### Electrical, Electronic and Communications Contracting Award 2010

#### When is overtime payable?

MEA submits that there is ambiguity in the award regarding when overtime commences on a daily basis as a result of the advice of the Fair Work Ombudsman.

The award states that overtime is calculated on a daily basis (26.1 (b)) and that ordinary hours can be 12 hours (clause 24.5) in a day. However, the Fair Work Ombudsman has regularly advised through its advice line and previous versions of their award guides that the ordinary hours for a casual work day are 8 hours.

MEA submits that for this interpretation the award would need to have similar clause provisions that many of the pre-reform awards did such as:

Pre-reform Award	Clause	Comment/Extract
Electrical, Electronic and Communications Contracting Industry (State) Award (NSW)	18.3	Maximum daily hours set at 8 hours (agreement needed to vary)
Electrical Contracting Industry Award State (QLD)	6.1.2	Ordinary hours of work 8; agreement needed to vary
Electrical, Engineering and Contracting Industries (Northern	28.3	Working hours cannot exceed 8 without agreement; then limited to 10 hours on any day

Territory) Award 2002		
National Electrical, Electronic and Communication Contracting Industry Award	20.2	Shall not exceed 8 hours on any day (without agreement)
Electrical Contracting Industry Award (WA)	11.1 (d)	Working hours cannot exceed 8 without agreement; then limited to 10 hours on any day
Electrical Contracting Industry (SA) Award	4.2.2	No reference to arrangement of hours of work

The modern award has no such provision and accordingly it would be incorrect to set casual hours at 8.

In the absence of such a provision a casual worker should be able work up to 12 ordinary hours without attracting overtime.

MEA submits that clarification; at least for the benefit of agencies advising should be made by the Commission by way of its decision or in the award.

### **Penalty Rate Payable**

MEA agrees that the award is not clear on the rate at which overtime is payable. While it is understood that the casual loading is not to be compounded for the purposes of calculating overtime; this is not immediately clear from reading the award.

MEA submits that employers and employees reading the award would benefit from the overtime rate for casual employees being expressed as percentage of the all-purpose as follows:

<b>Award Expression of Rate</b>	<b>Casual Penalty Rate (inclusive of casual loading)</b>
Time and a half	175%
Double time	225%
Double time and a half	275%

This expression of the casual penalty rate is consistent with other many modern awards.

### **Clerks – Private Sector Award 2010**

#### **Is overtime payable to casuals?**

MEA submits that the Clerks Private Sector Award 2010 refers, at clause 27.1, overtime is payable to 'employees' working overtime. 'Employees' is reasonably read as referring to all employees. Therefore, casual employees would be entitled to overtime payments is the view of MEA.

#### **When is overtime payable?**

MEA submits that the award is clear in relation to overtime being payable where an employee has exceeded the spread of hours fixed by the award or exceeds the maximum weekly hours as expressed by clause 27.1.

Further, the award stipulates that the daily hours, other than the minimum engagement, are capped at 10 ordinary hours in one day as expressed by clause 25.1.

### **Penalty Rate Payable**

MEA agrees that the award is not clear on the rate at which overtime is payable. While it is understood that the casual loading is not to be compounded for the purposes of calculating overtime; this is not immediately clear from reading the award.

MEA submits that employers and employees reading the award would benefit from the overtime rate for casual employees being expressed as percentage of the all-purpose as follows:

<b>Award Expression of Rate</b>	<b>Casual Penalty Rate</b> (inclusive of casual loading)
Time and a half	175%
Double time	225%
Double time and a half	275%

This expression of the casual penalty rate is consistent with other many modern awards.