



REPORT TO FULL BENCH

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

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(AM2019/17)

DEPUTY PRESIDENT CLANCY

MELBOURNE, 1 JUNE 2020

4 yearly review of modern awards – finalisation of Exposure Drafts and draft variation determinations – Tranche 3 awards – *Graphic Arts, Printing and Publishing Award 2010*.

[1] Arising from the Decision of the Full Bench dated 27 April 2020¹ with respect to finalising the Tranche 3 awards, a conference of parties with an interest in the *Graphic Arts, Printing and Publishing Award 2010* was held on Monday 25 May 2020 in an effort to resolve the outstanding issue in dispute.

Penalties for shiftworkers working overtime on a public holiday

[2] Ai Group has raised an issue concerning the penalties payable to shiftworkers who work overtime on a public holiday. Ai Group says the issue arises from the wording in clauses 37.3 and 37.4 of the Exposure Draft and submits:

‘Unless the problem is addressed before the new version of the award comes into operation, employers will be required to pay shift workers who work overtime on a public holiday a rate of up to 325% of the ordinary rate, rather 250% of the ordinary rate, as currently applies. This would be unfair and unjust and hence inconsistent with ss.3(b), 134 and 577 of the *Fair Work Act 2009*.’

[3] It may be noted that the form of wording in clauses 37.3 and 37.4 said to have given rise to this “problem” was first inserted into the Exposure Draft on 4 April 2019 following submissions of Ai Group dated 10 December 2018 that suggested it.

[4] Nonetheless, Ai Group now proposes the following amendments to Clauses 37.3 and 37.4 of the Exposure Draft:

37.3 An employee required to work on a public holiday or a substitute day, as provided for in the NES or clause 37.5, will be paid as follows with a minimum payment of 4 hours:

For ordinary hours	250% of the ordinary hourly rate
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¹ [2020] FWCFCB 2124.

For overtime 250% of the ~~overtime~~ ordinary hourly rate

Provided that:

(a) an employee required as an inserter in a non-daily newspaper office who is required to work on a public holiday will be paid as follows with a minimum payment of 2 hours:

For ordinary hours 250% of the ordinary hourly rate
For overtime 250% of the ~~overtime~~ ordinary hourly rate

(b) an employee engaged as a publishing employee in a non-daily newspaper office who is required to work on a public holiday will be paid as follows with a minimum payment of 3 hours:

For ordinary hours 250% of the ordinary hourly rate
For overtime 250% of the ~~overtime~~ ordinary hourly rate

37.4 Where a weekly employee in a non-daily or regional daily newspaper office, other than an employee listed in clauses 37.3(a) and 37.3(b), is required to work on a public holiday they will be given a day off instead within 7 days of the holiday occurring or be paid as follows with a minimum payment of 4 hours:

For ordinary hours 250% of the ordinary hourly rate
For overtime 250% of the ~~overtime~~ ordinary hourly rate

Provided clause 37.4 applies instead of the provisions in clause 37.3.

[5] Ai Group submits these amendments reflect the relevant entitlements that currently exist under clause 41 of the *Graphic Arts, Printing and Publishing Award 2010* and further, that they were the relevant entitlements in the pre-modern award, the *Graphic Arts - General Award 2000*.

[6] Australian Business Industrial & NSW Business Chamber Limited (ABI) agreed with the changes proposed by Ai Group at the conference. Subsequent to the conference, the AMWU has confirmed it does not oppose the changes sought by Ai Group.



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