



21 July 2016

Vice President Hatcher  
Fair Work Commission

Dear Associate to Vice President Hatcher

**AM2014/207: 4 yearly review of modern awards – Group 2 Awards – Nurses Award 2010**

We refer to the Fair Work Commission mention regarding Group 2 Awards held on 7 July 2016 and in particular to PN173-183 of transcript.

During that mention, Your Honour invited further written submissions regarding the *first* dot point in item 1 pertaining to the *Nurses Award* contained in the attachment to the FWC Notice of Listing released on 4 July 2016 (“the item 1.1 proposal”).

It was agreed at the mention that the matter would be dealt with by the Full Bench as presently constituted following further written submissions.

The item 1.1 proposal is ‘to vary Clause 6.4(d) to clarify [a] casual employee’s entitlement for working ordinary hours on weekends’.

The reference to clause 6.4(d) is to the Exposure Draft of the *Nurses Award*, the most recent version of which is dated 4 December 2015 and reads as follows:

(d) A casual employee will be paid shift allowances calculated on the minimum rate of pay applicable to their classification and pay point, excluding the casual loading with the casual loading component then added to the penalty rate of pay.

We note that this wording, which is different to the existing clause 10.4(d) of the *Nurses Award*, has previously been agreed (apart from the proposals contained in item 1) between the parties.

The item 1.1 proposal was first raised by the Aged Care Employers in submissions dated 28 January 2015 (in the second sub-paragraph of paragraph [6] of those submissions).

The existing award clause outlines how the casual loading and shift allowances (ie. afternoon and night shift) are calculated when a casual employee works shiftwork.

The item 1.1 proposal would effectively amend the existing clause to include a reference to how the extra amount payable is calculated when a casual employee

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performs work on a Saturday or Sunday. The relevant rates for work performed on a Saturday and Sunday are specified in clause 16 of the exposure draft.

The ANMF does not oppose the proposal to include a reference to working on weekends in clause 6.4(d) on the basis that this would reflect the decision of Watson VP in [2012] FWA 9240, where at [37] he stated:

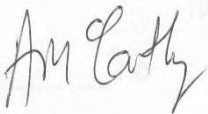
... In my view there is no basis in the Award to exclude the application of the casual loading on weekends and therefore it continues to apply when a casual works on a weekend. The loading is not however applied to the loaded weekend rate. In my view the same method of calculation applies to weekends as in the case of shift allowances. Each penalty is calculated on the base rate. The resultant amounts are added together.

The ANMF accordingly suggests that the most recent exposure draft version of clause 6.4(d) be amended to read as follows (with additions in red):

(d) A casual employee will be paid shift allowances **and Saturday and Sunday rates** calculated on the minimum rate of pay applicable to their classification and pay point, excluding the casual loading with the casual loading component then added to the penalty rate of pay.

The ANMF confirms that it remains opposed to the proposal specified in the *second* dot point of item 1 ("the item 1.2 proposal"), which is being referred to the casuals/part-time Full Bench.

Yours sincerely



Andrew McCarthy  
Federal Industrial Officer