



A•S•U

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The Honourable Justice Iain Ross  
President,  
Fair Work Commission  
PO Box 1994  
Melbourne VIC 3001

18 November 2016

By E-MAIL: amod@fwc.gov.au

Dear Justice Ross

**RE: AM2014/300 4 yearly review of modern awards—Award flexibility - time off in lieu of payment for overtime.**

The Australian Services Union (ASU) writes regarding the schedule of draft determinations issued by the Fair Work Commission on 26 September 2016 in regard to time off in lieu of payment for overtime clauses in modern awards.

The ASU believes there is a typographical error in the draft determination for the *Social, Community, Home Care And Disability Services Industry Award 2010* [MA000100].

At clause 28.2 (d) of the draft determination the requirement for time off to be taken is:  
utility

(d) *Time off must be taken:*

- (i) *within the period of **3** months after the overtime is worked; and*
- (ii) *at a time or times within that period of **3** months agreed by the employee and employer.*

Clause 28.2(d) is then cross-referenced at clause 28.2(f) with respect to TOIL not been taken within the period of **6** months. This reference to 6 months in clause 28.2(f) is incompatible with the **3** months period in clause 28.2(d).

Clause 28.2(f)

*If time off for overtime that has been worked is not taken within the period of **6** months mentioned in paragraph (d), the employer must pay the employee for the overtime, in the next pay period following those 3 months, at the overtime rate applicable to the overtime when worked, based on the rates of pay applying at the time payment is made.*

The ASU believes that a typographical error has led to this inconsistency. The ASU requests that the Fair Work Commission correct the draft determination by changing *6 months* in clause 28.2(f) to *3 months*.

Could you please advise the ASU of the outcome of this process.

If you have any further queries please contact the ASU on 03 – 9342 1446, 0419 343 145 or jcooney@asu.asn.au.

Yours faithfully,

Justin Cooney  
Industrial Officer  
Australian Services Union - National Office

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