

# Joint note

Filed on behalf of: The Australian Industry Group (Ai Group)  
Australian Nursing and Midwifery Federation (ANMF)

Date: 22 May 2020

Matter no.: AM2014/207, AM2019/17

Re: Joint Note in response to Fair Work Commission Decision [2020] FWCFB 2124

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1. This Joint Note is filed on behalf of the ANMF and the Ai Group in response to the Full Bench decision of 27 April 2020 requesting the parties file such a note by 4pm on Friday 22 May 2020<sup>1</sup> indicating the terms of the Exposure Draft (ED)<sup>2</sup> and Draft Variation Determination (DVD)<sup>3</sup> of the *Nurses Award 2010* (Award) which are related to AM2020/1.
2. In application AM2020/1, Ai Group seeks to amend the Award with regard to how the casual loading interacts with:
  - (a) The Saturday and Sunday penalty rates prescribed by current clause 26;
  - (b) The overtime rates prescribed by current clause 28; and
  - (c) The public holiday penalty rates prescribed by current clause 32.1.
3. The central issue in AM2020/1 is whether the casual loading and the aforementioned amounts are calculated on a cumulative or compounding basis.
4. The parties have identified the following terms of the ED and DVD as clearly relating to AM2020/1. As at the time of filing this joint note, the parties have not yet filed their material in relation to AM2020/1. If the parties identify additional provisions of the ED and DVD that they consider are also related to AM2020/1 in the course of that matter being considered, they may separately or jointly seek leave to identify any such additional provisions to the Commission in the context of these proceedings.

(a) ED and DVD clause 11.2<sup>4</sup>:

## 11.2 Casual loading

For each hour worked, a casual employee must be paid

- (a) the minimum hourly rate applicable to their classification and pay point; and
- (b) a loading of 25% of the minimum hourly rate applicable to their classification and pay point,

for the classification in which they are employed.

(b) ED and DVD clause 11.4<sup>5</sup>:

**11.4** 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,

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<sup>1</sup> [\[2020\] FWCFB 2124](#) at [330]

<sup>2</sup> [Exposure draft – Nurses Award – changes tracked](#) (29 January 2020)

<sup>3</sup> [Draft award variation determination – Nurses Award](#) (29 January 2020)

<sup>4</sup> Ai Group, [Draft Determination](#) (24 April 2020) at A.1

<sup>5</sup> *Ibid.*, at A.2

excluding the casual loading with the casual loading component then added to the penalty rate of pay.

(c) ED and DVD clause 21<sup>6</sup>:

**21. Saturday and Sunday work**

**21.1** Where an employee is rostered to work ordinary hours between midnight Friday and midnight Saturday, the employee will be paid 150% of their minimum hourly rate for the hours worked during this period.

**21.2** Where an employee is rostered to work ordinary hours between midnight Saturday and midnight Sunday, the employee will be paid 175% of their minimum hourly rate for the hours worked during this period.

(d) ED and DVD clause 19.1<sup>7</sup>:

**19.1 Overtime rates**

(a) Hours worked in excess of the ordinary hours on any day or shift prescribed in clause 13—Ordinary hours of work are to be paid as follows:

(i) Monday to Saturday (inclusive)—150% of the minimum hourly rate applicable to their classification and pay point for the first 2 hours and 200% thereafter;

(ii) Sunday—200% of the minimum hourly rate applicable to their classification and pay point; and

(iii) Public holidays—250% of the minimum hourly rate applicable to their classification and pay point.

(b) Overtime rates as prescribed in clause 19.1(a) do not apply to Registered nurse levels 4 and 5.

(c) Overtime rates under clause 19 will be in substitution for and not cumulative upon the shift and weekend premiums prescribed in clause 20—Shiftwork and clause 21—Saturday and Sunday work.

(d) Part-time employees All time worked by part-time employees in excess of the rostered daily ordinary full-time hours will be overtime and will be paid as prescribed in clause 19.1(a).

(e) ED and DVD clause 28.2<sup>8</sup>:

**28.2 Payment for work done on public holidays**

(a) All work done by an employee during their ordinary shifts on a public holiday, including a substituted day, will be paid at 200% of the minimum hourly rate applicable to their classification and pay point.

(b) Businesses that operate 7 days a week shall recognise work performed on 25 December which falls on a Saturday or Sunday and, where because of substitution, is not a public holiday within the meaning of the NES with the Saturday or Sunday payment (as appropriate) plus an additional loading of 50%

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<sup>6</sup> *Ibid.*, at A.3

<sup>7</sup> *Ibid.*, at A.4

<sup>8</sup> *Ibid.*, at A.5

of the employee's ordinary time rate for the hours worked on that day. All work performed on the substitute day by an employee will receive an additional loading of 50% of the ordinary time rate for the hours worked on that day instead of the rate referred to in clause 28.2(a).

**(f)** ED and DVD Schedule B—Summary of Hourly Rates of Pay.