



## WAMMCO MEMBERS UPDATE

- In 2013 the “WAMMCO INTERNATIONAL (KATANNING) AMIEU PROCESSING AGREEMENT (2013)” was certified by the Fair Work Commission (FWC).
- In 2018 the AMIEU moved to terminate the above agreement.
- During this process the FWC have again looked at the comparison of the agreement versus the Award and came back with a 4 page email outlining their findings.
- They found that the ordinary hourly rate was incorrect and had the clause 1.4.1 of the 2013 agreement been applied correctly it would have resulted all workers being on a different pay rate which is what has caused the company to elevate your rate of pay.
- The AMIEU is looking at these underpayments for you currently. Last week Debbie was on site and had collected authority from some workers allowing us to obtain copies of their time and wage records in order for us to do a full calculation on whether anyone has a claim to pursue. The company is now claiming that it has been overpaying people and we have asked them to supply detail to us of exactly where they say this has happened.
- In the mean time we still continue to negotiate with the company for an agreement that will pass the BOOT (Better Off Overall Test) and have everyone being paid better than the Minimum wages and conditions set out in the Award.

The FWC team have found the following:

### RATES OF PAY

The agreement appears to offer permanent adults base rates of pay between 1.62% - 5.88% above the Modern Award. This is then offset against various other conditions that are less than what the award pays.

- The agreement offers a flat overtime rate, rather than overtime penalties. The agreement overtime rate appears to be between 8.56% – 12.24% below the Award rate of pay for overtime that would be paid at 150%. The agreement overtime rate appears to be between 31.42% - 34.18% below the Award rates of pay for overtime that would be paid at 200%.

### ENTITLEMENTS

- Cl. 2.9.3.1 of the agreement provides a flat loading on \$3 per hour for each ordinary hour or part thereof performed by an employee engaged on shift work outside the hours 4am – 8pm. Cl. 33 of the Award provides an afternoon shift penalty of 15% for any shift commencing at or after 2pm and finishing at or before midnight and a night shift penalty of 25% for any shift finishing after midnight and at or before 9am. Employees working afternoon or night shift may not be better off overall under the agreement than under the Award.

- Cl. 33.9(e) of the Award provides that a shift worker who works on an afternoon or night shift which does not continue for at least five successive afternoon or night shifts must be paid for each shift 150% for the first three hours and 200% for the remaining hours. The agreement does not appear to contain a similar provision.
- the agreement offers a flat overtime rate, rather than overtime penalties. The overtime rate appears to be below the Award rates of pay.
  - Full time employees working overtime on a Saturday or Sunday may not be better off overall under the agreement.
  - Part time and casual employees engaged on a Saturday or Sunday may not be better off overall under the agreement.
- Clause 2.1.2 of the agreement states the employer may transfer any employee from full time to casual employment with one weeks' notice. Clause 11.4 of the Award provides that the employer may require an employee to transfer from full time to daily hire, not casual employment. This may be a BOOT concern as daily hire employees are entitled to a 10% loading, a minimum engagement of 7.6 ordinary hours for each day they are employed and leave entitlements.

The agreement offers a number of entitlements less beneficial than the corresponding modern Award, including the following:

- Clause 2.7.2 states that meal breaks must commence no later than 6 hours after the employees ordinary commencing time. The Award provides that no employee will work longer than 5 hours without a minimum 30 minute unpaid meal break.
- Employees are entitled to 10 minute paid rest break in the award (cl. 32.2). This is not included in the agreement. Clause 2.8.1 of the agreement provides a 5 minute unpaid relief break.
- the agreement does not appear to offer domestic violence leave. Clause 42 of the Award provides for 5 days unpaid domestic violence leave.
- the agreement does not appear to offer casual employees the right to request casual conversion.
- the agreement is silent on many allowances, such as first aid, clothing, cold temperature, and leading hand. The agreement offers a less beneficial meal allowance.

We have also subsequently advised the FWC that the agreement does not have annual leave loadings either.

The test that is applied at this stage is a guideline and more extensive submissions can occur at the point that an agreement is presented to the FWC for approval, but the law is clear in that unless every worker under the agreement is better off under the agreement than what they would be under the award, the agreement will now fail and will not be approved.

Authorised by Sharra Anderson

Branch Secretary, AMIEU South & Western Australian Branch

