

SUMMARY OF PRE-MODERN AWARD EXTRACTS ON TOIL AND OVERTIME

Introduction

The following extracts are from twelve (12) prominent awards and agreements spanning twenty years. Many were in force up to the period in which the JPMA was being drafted (in 2009).

The text below sets out the provisions that applied as compensation for overtime. The underlining of the Award clauses is by MEAA. The comments set out are those of MEAA.

AP805243 - Journalists (John Fairfax Group) Award 2001

AIRC consolidated award incorporates all amendments up to and including 15 July 2005

19. OVERTIME

19.1 Any amount paid to a member in excess of the minimum award rate of pay for the member's grade shall not be regarded as a set-off against overtime worked, except as provided for in **clause 5.4** of this award.

19.2 The hourly rate for overtime purposes shall be calculated by dividing the minimum award rate of pay for the member's grade by 38.

19.3 All overtime payments due to a member shall be made within eighteen days of the end of the week or fortnight, as the case may be, in which the overtime was worked.

19.4 Daily overtime represents all time worked outside a member's rostered hours of duty, except for time worked on a rostered day off. Daily overtime shall be compensated for in the following manner:

19.4.1 Up to and including the first hour of overtime shall either be given off as time in lieu at the rate of time and a half within the following fortnight or paid for at the rate of time and a half at the discretion of the employer.

19.4.2 Overtime in excess of one hour shall be paid for at the rate of time and a half for the first hour and double time thereafter.

19.4.3 A member may, by mutual agreement with his or her employer, opt to take time off in lieu at the rate of single time within the next twelve months. Such agreement shall be recorded in writing.

19.5 Any time allowed off duty in lieu of overtime shall be deemed to be ordinary rostered hours for the day or days on which the time off in lieu is taken.

19.11 Where an employer requires a member to perform work which is additional to that member's ordinary hours of duty for the week or fortnight, that work shall be treated as overtime.

19.11.1 Provided that members employed on a publication (the employing publication) may volunteer to work outside their ordinary hours of duty on another publication owned by the same Employer (but not including a publication associated with the employing publication) under the following conditions:

19.11.1(a) Members shall be paid at the daily rate applicable to their grade, provided that no Member shall be paid at less than the rate applicable to a Grade 3; and

19.11.1(b) all other conditions of the Award shall apply as though they were working ordinary time. This shall include, but not be limited to, shift and weekend penalty rates, overtime (if worked) and pro rata annual leave pay.

Comment: Overtime payment was the default position. It could be varied where an employee opted to take TOIL and a mutual written agreement was reached to take TOIL in the following 12 months.

AP785898CR - Journalists (Specialist Publications) Award 1999

FWA consolidated award incorporates all amendments up to and including 22 July 2005

17.2 Overtime

Where an employee, other than a Casual Employee, is required to work in excess of 38 hours in any week, the employee shall be entitled to time off for a period which is the same as the period of overtime worked to be taken within six weeks of the end of the week in which the overtime was worked. The period in which time off can be taken in that six week period is to be agreed between the employer and the employee, or if no agreement is reached, at a time determined by the employer. If, for any reason, such time off in lieu has not been so given and taken the employee shall be paid for such overtime at the rate of time and one half for the first eight hours overtime in any week and at the rate of double time for all overtime in excess of eight hours in any week.

Comment: Overtime was compensated by TOIL, such TOIL to be agreed and taken within six weeks following the end of the week the overtime was worked. If no agreement as to timing of TOIL, the employer could direct timing of TOIL. If for any reason the TOIL was not taken, the employee received overtime payments.

AP785612 - Journalists (Murdoch Magazines) Enterprise Award 2000

AIR consolidated award incorporates all amendments up to and including 22 July 2005

17. OVERTIME

17.1 Work in excess of the daily spread of ordinary hours of work determined in accordance with clause 16 - Hours of Work, is not usually required but, when necessary, shall be worked at the request of the company and time in lieu or payment will be granted as agreed between the company and the member.

17.2 Payment for overtime shall be at the rate of time and one half for the first two hours and double time thereafter.

17.3 Members classified at grade 9 shall be excluded from payment for overtime as set out in this clause.

Comment: Overtime could only be worked and recognised at the request of the company. TOIL or overtime payments were to be granted as agreed by the company and the employee.

AP785597 - Journalists (ACP) Award 1999

AIR consolidated award incorporates all amendments up to and including 26 July 2005

18.1 Any amount paid to a member in excess of the minimum rate to which the member is entitled shall not be regarded as a set off against overtime worked, except as provided for in 5.3.2. The hourly rate for overtime purposes shall be calculated by dividing the number of ordinary weekly hours of employment into the minimum weekly award rate of pay for the member's grade.

18.2 Daily overtime represents all time worked after the expiration of eleven hours from entering upon duty in any day and shall be dealt with as specified in 18.10 provided that where under that sub-clause payment is made for such overtime, the first two hours of that overtime shall be paid at the rate of time and a half and hours thereafter at the rate of double time.

18.4 Weekly overtime represents all time worked in excess of the ordinary hours of work per week fixed in accordance with 18.2 and 18.3, or the reduced total hours occasioned by giving time off in lieu of overtime, but excludes time already adjusted pursuant to 18.2 and 18.3. Weekly overtime shall be dealt with as specified in 18.10 provided that where under that sub-clause payment is made for such overtime:

18.4.1 The first eight hours shall be paid for at the rate of time and one half.

18.4.2 Overtime beyond eight hours shall be paid for at the rate of double time.

18.5 Time off

18.5.1 When overtime is liquidated by giving time off amounts to four hours or less, it shall be given off in one block of four hours.

18.5.2 Where such overtime exceeds four hours and is less than eight hours, it will be given off in not more than two units each of four hours.

18.5.3 When such overtime is eight hours or more, it shall be given off in not more than two units, one of which shall be eight hours and the other of which are not less than four hours.

18.6 Any time allowed off duty in lieu of overtime shall correspondingly reduce the ordinary weekly hours of work for that week. All time worked in excess of the reduced total hours for that week shall be reckoned as overtime and dealt with in accordance with 18.4.

18.7 When a member is not given days off duty as provided in 17.3, the member shall be paid at the rate of double time for all work done on any such day or days with the minimum payment of four hours. When such time is paid for it shall not be included in the ordinary hours of work.

18.8 In no circumstances shall overtime involving any of the foregoing sub-clauses be paid for or adjusted by way of time off more than once.

18.9 Notwithstanding anything hereinbefore contained any overtime on a distant engagement shall be governed by clause 26.

18.10 Where a member notifies the employer he or she has worked overtime which any of the preceding sub-clauses require to be adjusted in accordance with this sub-clause [such

notification to be given to the employer no later than the first working day after the week in which the overtime was worked]

18.10.1 Within 14 days of the end of the week in which such overtime is worked, the employer may direct that the overtime shall be allowed off in full within 21 days from the end of the week in which the overtime was worked or be paid for in accordance with the provisions of the relevant sub-clause of this clause or the overtime may be allowed off in full at some other mutually agreed time.

18.10.2 If the employer has not exercised the option of directing time off or payment for such time in accordance with 18.10.1 and no agreement for the overtime to be allowed off in full has been made in accordance with that paragraph, the member may within 7 days after the time for the employer exercising that option has expired, elect for one of the following by notifying his employer accordingly:

- Payment at appropriate overtime rate; or
- Time off at a mutually agreed time in accordance with 18.5.

18.10.3 If a member does not exercise the option provided for in 18.10.2, all overtime shall be paid for in accordance with the provisions of this sub-clause.

Comment: Employer may direct TOIL instead of overtime payment, such TOIL to be taken within 21 days from the end of the week the overtime was worked or at a different mutually agreed time. If the employer did not issue a TOIL direction within 14 days or TOIL dates were not agreed, the employee could elect to be paid overtime or TOIL at an agreed time. Where such an election was not made, overtime was payable.

JOURNALISTS (RURAL, ETC. PUBLICATIONS) AWARD 1991

(ODN C No. 22231 of 1990) [Print J9911 [J0032]] SYDNEY, 2 JUNE 2000

18. OVERTIME

18.1 Any amount paid to a journalist or cadet in excess of the minimum rate to which he/she is entitled under this award, shall not be regarded as a set-off against overtime worked. The hourly rate for overtime purposes shall be calculated by dividing the number of weekly hours into the minimum rate for the employee's grade.

18.2 Daily overtime represents all time worked after the expiration of 11 hours from entering upon duty on any day. Daily overtime shall be adjusted by allowing time off in lieu as hereinafter provided.

18.3 Weekly overtime:

18.3.1 represents all time worked in excess of:

18.3.1(a) 38 ordinary hours per week in the case of members who work their ordinary hours per week as provided 17.2.1 and 17.2.4;

18.3.1(b) the ordinary weekly hours of work specified in 17.2.2 and 17.2.3 in the weeks comprising the work cycles provided for in those clauses; or

in excess of the ordinary hours in 18.3.1(a) and 18.3.1(b) reduced by time given off in lieu of overtime or by days given off after the week in which they are due.

18.3.2 Weekly overtime shall be dealt with as specified in 18.8 provided that where under that subclause, payment is made for such overtime:

18.3.2(a) the first 8 hours shall be paid for at the rate of time and one-half;

18.3.2(b) overtime beyond 8 hours shall be paid for at the rate of double time.

18.4 Time off in lieu of daily overtime shall be allowed within a period of 28 consecutive days from the end of the week in which such overtime occurs or within such other period as may be agreed and all time off duty in lieu of overtime shall correspondingly reduce for the week in which it is allowed off the ordinary hours of work for that week. All time worked in excess of the reduced total hours for that week shall be reckoned as overtime and shall be adjusted as provided in this subclause.

18.8 Where a member has worked weekly overtime:

18.8.1 within 7 days of the end of the week in which such overtime is worked, the employer may direct that the overtime shall be allowed off in full within 28 days from the end of the week in which the overtime was worked or will be paid for in accordance with the provisions of 18.3 or the overtime may be allowed off in full at some other mutually agreed time;

18.8.2 if the employer has not exercised the option of directing time off or payment for such time in accordance with 18.8.1 and no agreement for the overtime to be allowed off in full has been made in accordance with that paragraph, the employee may within 7 days after the time for the employer exercising that option has expired, elect for one of the following by notifying his or her employer accordingly:

- payment at the appropriate overtime rate; or
- time off at a mutually agreed time in accordance with 18.6;

18.8.3 if a member does not exercise the option provided for in 18.8.2, all overtime shall be paid for in accordance with the provisions of 18.3

Comment: Employer could direct overtime to be paid as TOIL but this was to be taken within 28 days from the end of the week in which such overtime occurs or within such other period as may be agreed. If the employer did not issue a direction within 7 days and agreement has not been reached on taking TOIL at a different time, the employee can express a preference for overtime or TOIL.

JOURNALISTS (AUSTRALIAN ASSOCIATED PRESS) AWARD 1991

(ODN C No. 22231 of 1990) [Print J8034 [J0020]] SYDNEY, 18 NOVEMBER 1999

19. OVERTIME

19.1 Any amount paid to a member in excess of the minimum award rate of pay for the member's grade shall not be regarded as a set-off against overtime worked, except as provided for in 5.4.4 of this award.

19.1.1 The hourly rate for overtime purposes shall be calculated by dividing the minimum award rate of pay for the member's grade by 38.

19.2 **Daily overtime** represents all time worked outside a member's rostered hours of duty, except for time worked on a rostered day off.

19.3 Daily overtime shall be compensated for in the following manner:

19.3.1 Up to and including the first hour of overtime shall either be given off as time in lieu at the rate of time and a half within the following fortnight or paid for at the rate of time and a half at the discretion of the employer.

19.3.2 Overtime in excess of one hour shall be paid for at the rate of time and a half for the first hour and double time thereafter.

19.3.3 A member may, by mutual agreement with his or her employer, opt to take time off in lieu at the rate of single time within the next twelve months. Such agreement shall be recorded in writing.

Comment: TOIL applied for the first hour of additional work and overtime paid within the following fortnight 'at the discretion of the employer'. Overtime in excess of one hour was to be paid as overtime. Taking TOIL in preference to overtime payments was at the employee's election and established by written agreement.

AP819806CAN - Journalists (News Limited - Metropolitan Daily Newspapers) Award 2002
FWA consolidated award incorporates all amendments up to and including 3 March 2006

18.1 Any amount paid to a member in excess of the minimum award rate of pay for the member's grade shall not be regarded as a set-off against overtime worked, except as provided for in **sub-clause 5.3**. The hourly rate for overtime purposes shall be calculated by dividing the minimum award rate of pay for the member's grade by 38.

18.2 Overtime represents all time worked outside a member's rostered hours of duty, except for time worked on a rostered day off (hereinafter called a "sixth shift").

18.3 Overtime

Overtime shall be compensated for in the following manner:

18.3.1 Overtime, other than a sixth shift, will be banked to be taken as time off in lieu at single time;

18.3.2 Time off in lieu of overtime shall be taken as mutually agreed, or by the employer rostering accrued overtime as time off in lieu, by giving at least 14 days' notice that the member is required to take such accrued time off in lieu, provided it is taken prior to sub-clauses 18.3.3 and 18.3.4 having effect;

18.3.3 On 1 January in each year, all untaken time off in lieu accrued before 1 July in the previous year shall be paid out at the overtime rates prescribed in sub-clause 18.3.6.

18.3.4 On 1 July in each year, all untaken time off in lieu accrued before 1 January in that year shall be paid out at overtime rates prescribed in sub-clause 18.3.6.

18.3.6 Where mutually agreed, overtime may be paid as it is worked at the rate of time and a half for the first two hours and double time thereafter.

18.4 Any time allowed off duty in lieu of overtime shall be deemed to be ordinary rostered hours for the day or days on which the time off in lieu is taken.

18.5 Additional Sixth Shift

When a member is not given the days off duty as provided for in sub-clause 17.3, the member shall be paid at the rate of double time based on the minimum award rate for all work done on any such day or days with a minimum payment for four hours.

Comment: Overtime banked as TOIL, but TOIL was time limited and if not taken within 6 months, overtime was to be paid. This is the provision that most closely resembles clause 22 of the Journalists Published Media Award 2010.

AP785590 - Journalists (Regional Daily Newspapers) Award 1999

FWA consolidated award incorporates all amendments up to and including 14 May 2007

6.4 OVERTIME

- 6.4.1** Payments made to a member in excess of the weekly award rate of pay for the member's grade will not be regarded as a set off against overtime worked.
- 6.4.2** The hourly rate for overtime purposes will be calculated by dividing the weekly award rate of pay for the member's grade by 38.
- 6.4.3** Overtime payments due to a member will be made within 18 days of the end of the week or fortnight in which the overtime is worked.
- 6.4.4** Daily overtime represents all time worked outside a member's rostered hours of work, except for time worked on a rostered day off.
- 6.4.5** Daily overtime will be compensated for as follows:
- 6.4.5(a)** up to an including the first hour of overtime will at the discretion of the employer, either:
 - 6.4.5(a)(i)** be given off as time in lieu at the rate of time and a half within the following fortnight, or,
 - 6.4.5(a)(ii)** paid for at the rate of time and a half.
 - 6.4.5(b)** overtime in excess of one hour will be paid for at the rate of time and a half for the first 2 hours and double time thereafter.
 - 6.4.5(c)** by agreement in writing between the employer and the member all overtime may be taken as time in lieu at the rate of single time within the next 12 months.
 - 6.4.5(d)** time allowed off duty in lieu of overtime will be counted as ordinary rostered hours for the day or days on which the time off in lieu is taken.

Comment: Default system was payment of overtime. Overtime payments were due within 18 days of the end of the week or fortnight in which the overtime is worked. TOIL could be taken in preference to overtime by written agreement between employee and employer.

AP790112 - Media Monitoring Industry Award 1999

FWA consolidated award incorporates all amendments up to and including 26 July 2005

- 16.1** Overtime means all time worked outside the ordinary hours of work described in clause 14 of this award.
- 16.2** Overtime shall be compensated for in the following manner:
- 16.2.1** Up to and including the first hour of overtime shall either be given off as time in lieu at the rate of time for time, or paid for at the rate of time and a half at the discretion of the employer.
- 16.2.2** Overtime in excess of one hour shall be paid for at the rate of time and a half for the next 2 hours, and double time thereafter.
- 16.2.3** Provided further that an employee may, by mutual agreement [in writing] take all time off in lieu of overtime, at the rate of time for time within 12 months of the overtime being worked.

Comment: The default system was the payment of overtime. TOIL was at the employee's election and required mutual agreement.

AP824025 - Journalists (Suburban Newspapers) Award 2003

FWA consolidated award incorporates all amendments up to and including 22 July 2005

21. OVERTIME

- 21.1** Any amount paid to a member in excess of the minimum award rate of pay for the member's grade shall not be regarded as a set-off against overtime worked.
- 21.2** The hourly rate for overtime purposes shall be calculated by dividing the minimum weekly award rate of pay for the member's grade by 38.
- 21.3** All overtime payments due to a member shall be made within eighteen days of the end of the week or fortnight, as the case may be, in which the overtime was worked.
- 21.4** "Daily overtime" represents all time worked outside a member's rostered hours of duty, except for time worked on a rostered day off.
- 21.5** Daily overtime shall be compensated for in the following manner:
- 21.5.1** Up to and including the first hour of overtime shall either be given off as time in lieu at the rate of time and a half within the following fortnight or paid for at the rate of time and a half at the discretion of the employer.
- 21.5.2** Overtime in excess of one hour shall be paid for at the rate of time and a half for the first two hours and double time thereafter.
- 21.5.3** A member may, by mutual agreement with his or her employer, opt to take time off in lieu at the rate of single time within the next twelve months. Such agreement shall be recorded in writing.
- 21.6** Any time allowed off duty in lieu of overtime shall be deemed to be ordinary rostered hours for the day or days on which the time off in lieu is taken.

Comment: Payment for overtime was to be made within eighteen days of the end of the week or fortnight, as the case may be, in which the overtime was worked TOIL was at the employee's election. TOIL agreement was to be in writing.

AN160187 – Journalists' (Suburban and Free Newspapers) Award, 1984

FWA consolidated award reproduces the former State award Journalists' (Suburban and Free Newspapers) Award, 1984 as at 27 March 2006.

15. - HOURS

- (1) The ordinary working fortnight shall not exceed eighty hours, excluding time actually occupied as meal time.
- (2) There shall be two clear days off in any week.
- (3) Hours in excess of eighty in any fortnight shall either be paid at overtime rates or given off at a time agreed between the employee and the employer but within the following fortnight.

17. - OVERTIME

Subject to sub-clause (2) of Clause 15. - Hours of this award overtime shall be paid at the rate of time and a half for the first eight hours worked after eighty hours in a fortnight and thereafter at double time.

Comment: Time off was required to be agreed. TOIL or overtime payments had to be honoured within two weeks of the overtime being performed.

***Journalists' (Fairfax Community Newspapers NSW and Newcastle Newspapers Pty Ltd)
Collective Agreement 2007 - 2009***

7. OVERTIME

7.1.1 Any amount paid to an Employee in excess of the minimum award rate of pay for the Employee's grade shall not be regarded as a set-off against overtime worked.

7.1.2 The hourly rate for overtime purposes shall be calculated by dividing the minimum Agreement rate of pay for the Employee's grade by 38.

7.2 All overtime payments due to an Employee shall be made within 18 days of the end of the week or fortnight, as the case may be, in which the overtime was worked.

7.3 Daily overtime represents all time worked outside an Employee's rostered hours of duty, except for time worked on a rostered day off.

7.4 Daily overtime shall be compensated for in the following manner:

7.4.1 Up to and including the first hour of overtime shall either be given off as time in lieu at the rate of time and a half within the following fortnight or paid for at the rate of time and a half at the discretion of the Company.

7.4.2 Overtime in excess of one hour shall be paid for at the rate of time and a half for the first two hours and double time thereafter.

7.4.3 An Employee may, by mutual agreement with his or her Company, opt to take time off in lieu at the rate of single time within the next twelve months. Such agreement shall be recorded in writing.

Journalists' (FCN NSW & Newcastle Newspapers) Agreement 2007 – 2009.

7.5 Any time allowed off duty in lieu of overtime shall be deemed to be ordinary rostered hours for the day or days on which the time off in lieu is taken.

7.6 An Employee entitled to be paid for a day or days off under 5.8 shall be paid at the rate of double time for all time worked on any such day or days with a minimum payment of 4 hours except when any such day is a public holidays as defined in 9.4.

Comment: Overtime payments were required within 18 days of the end of the week or fortnight in which the overtime was performed. TOIL was at the employee's election. TOIL agreement had to be in writing.