

21 March 2011

ALL MEMBERS



PAYMENT OF ANNUAL LEAVE LOADING ON TERMINATION

In a 180 ° turnaround the Fair Work Ombudsman (FWO) has stated that award or agreement-based annual leave loading is to be paid on lump sum annual leave payments on termination: regardless of whether the award or agreement provides to the contrary.

In making this decision the FWO has relied on advice from the Australian Government Solicitors which ignores the terms and intent of awards, agreements and the historical rationale for payment of annual leave loading.

Printing Industries holds the view that the express provisions in individual awards and agreements should apply in relation to whether or not the loading is payable upon termination of employment: as has occurred since annual leave loading was introduced into awards from 1974. Until recently this was also the view of the FWO.

In support of our view *Printing Industries* has written to the FWO and supported ACCI in various approaches to FWO and the relevant Minister, Senator Chris Evans. Despite discussion with the Minister on 1 March he has not indicated what the final outcome might be.

In the meantime, employers are left in suspense as to what to do as there has been no indication of a moratorium on enforcement pending any decision from the Minister: should payment be withheld with the risk of FWO action against an employer or should payment be made, risking ultimate overpayment?

Members with enquiries regarding the above should contact *Printing Industries'* National Network of Employee Relations Specialists by phoning 1800 227 425.

Yours faithfully

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