



10 February 2016

Stephen Palethorpe
Secretary
The Senate Standing Committee on Education and Employment

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Dear Mr Palethorpe

Re: Inquiry into the incidence of, and trends in, corporate avoidance of the *Fair Work Act 2009*

We write in response to correspondence from you as Secretary of the Senate Standing Committee on Education and Employment received on 27 January 2017 in response to a submission from Unions Ballarat to the above Inquiry.

The Victorian Chamber of Commerce and Industry (Victorian Chamber) is an Employers' Association registered as an Organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth). The Victorian Chamber has provided members with comprehensive Modern Award wage information for a number of years. Wage information is provided to subscribing members in excel format. The formulas in the excel spreadsheets are calculated on the absolute figures taken from the weekly wage in Determinations released annually by the Fair Work Commission (FWC).

In its role as a Registered Organisation, the Victorian Chamber has a positive relationship with the Fair Work Ombudsman (FWO) and regularly has cause to communicate with that body. The Victorian Chamber has previously engaged in discussions with the FWO in relation to the methodology it applies when calculating Modern Award wage rates for the purpose of providing information to the general public and publication on the FWO web site. As a consequence of the issue raised in Unions Ballarat's submission (that is a discrepancy of one (1) cent per hour in some of the published wage rates in the *Cleaning Services Award 2010*), the Victorian Chamber has again been in contact with the FWO to clarify the respective methodologies used.

Following the most recent discussion we understand that up until 2014 the FWO calculated wage rates based on the weekly rate to 6 (six) decimal points and then rounding to two (2) decimal points. The methodology the Victorian Chamber use calculates wage rates based on the weekly rate to four (4) decimal points and then rounding to two (2) decimal points. We were advised the FWO made an internal decision in 2014 to change the process when calculating wage rates. The FWO wage rates are now calculated on the hourly rate to two (2) decimal points. At the time of the change FWO noticed there was a one (1) cent discrepancy with some of the wage rates previously published on their website.

We explained the Victorian Chamber's process of calculating wage rates to the FWO and asked for feedback. The response we received was the way the wage rates are calculated could easily be defended if there ever was any challenge. The view of the FWO was '*a lot of people take the hourly rate and are moving away from the weekly rate*' when calculating wage rates.

The very slight difference in rounding has resulted in some very slight differences between the Victorian Chamber's and FWO's wage rates. Accordingly, the discrepancy in rounding could result in a difference of one (1) cent either above or below the wages rates published by the FWO. The FWO advised the change in methodology adopted in 2014 was not a consequence of a FWC decision. We understand from our discussion with the FWO their change in methodology was due to a change in their systems. The FWO did not provide any further reasoning behind the way their wage rates were calculated.

The Victorian Chamber's methodology is also supported by the FWC's [Annual Wage Review 2015–16 Decision](#)

FWC noted the weekly wages would be rounded to the nearest ten (10) cents. See relevant extracts from the Review:

“[105] The determinations and order giving effect to our decision will come into operation on 1 July 2016. Weekly wages will be rounded to the nearest 10 cents.

...

[663] The determinations necessary to give effect to the increase in modern awards will be made available in draft form shortly after this decision. Weekly wages in the NMW order and modern awards will be rounded to the nearest 10 cents and hourly wages will be calculated by dividing the weekly rate by 38, on the basis of the 38-hour week for a full-time employee. Determinations varying the modern awards will be made as soon as practicable and the modern awards including the varied wage rates will be published as required by the Act.”

It is worth noting the only “hourly” rate expressed in the *Cleaning Services Award 2010* is the ‘base hourly rate’. All other penalties are expressed as percentages in addition to that base rate, without actually calculating or expressing the said ‘loaded rate’. The calculation of ‘loaded’ rates is provided by both the FWO and the Victorian Chamber as helpful information, rather than as a determinative or absolute rate.

Sample wage rates below from the *Cleaning Services Award 2010* show examples of the difference between the FWO methodology when calculating based on two (2) decimal points and the Victorian Chamber's use of ‘actual’ figures dividing the weekly rate by 38 hours to four (4) decimal points. AS explained above, the difference in methodology can result in some variations of one (1) cent per hour. Examples where the Victorian Chamber rate is one (1) cent higher than the FWO rate are shown in **green text**. Examples where the FWO rate is one (1) cent higher than the Victorian Chamber rate are shown in **red text**. The ‘actual’ figures are calculated by dividing the weekly rate by 38 hours.

Adult – Part Time Employee – Level 1

Ordinary Hours	Weekly Rate	Hourly Rate	Part Time Loading	Saturday	Sunday	Public Holiday
	Base Rate	Base Rate	Base + 15%	Base +15%+50%	Base +15%+100%	Base +15%+150%
Actual	\$718.40	\$18.9052	\$21.7410	\$31.1935	\$40.6462	\$50.0988
VCCI	\$718.40	\$18.91	\$21.74	\$31.19	\$40.65	\$50.10
FWO	\$718.40	\$18.91	\$21.75	\$31.20	\$40.66	\$50.11

Junior - Full Time Employee -17 years of age – Level 1 (shopping trolley collection contractors only)

Ordinary Hours	Weekly Rate	Hourly Rate	Part Time Loading	Saturday	Sunday	Public Holiday
	Base Rate	Base Rate	N/A	Base + 50%	Base + 100%	Base + 150%
Actual	\$431.04	\$11.3431	N/A	\$17.0147	\$22.6962	\$28.3677
VCCI	\$431.04	\$11.34	N/A	\$17.01	\$22.69	\$28.36
FWO	\$431.04	\$11.34	N/A	\$17.01	\$22.68	\$28.35

Junior - Casual Employee – 20 years of age – Level 1 (shopping trolley collection contractors only)

Ordinary Hours	Weekly Rate	Hourly Rate	Casual Loading	Saturday	Sunday	Public Holiday
	Base Rate	Base Rate	Base Rate + 25%	Base + 25% + 50%	Base + 25% + 100%	Base + 25% + 150%
Actual	\$656.56	\$17.0147	\$21.2684	\$29.7757	\$38.2830	\$46.7904
VCCI	\$656.56	\$17.01	\$21.27	\$29.78	\$38.28	\$46.79
FWO	\$656.56	\$17.01	\$21.26	\$29.77	\$38.27	\$46.78

The FWO 'Pay Guide - Cleaning Services Award 2010 [MA000022]', published on 28 June 2016, contains a total of 339 separate minimum wage rates for a variety of shift and penalty rate circumstances. On our calculation the published FWO rate is one (1) cent higher than the published Victorian Chamber rate on 46 occasions. On our calculation the published Victorian Chamber rate is one (1) cent higher than the published FWO rate on 114 occasions.

By way of final observation please note the disclaimer the Victorian Chamber includes on all our wage information spreadsheets:

"Please Note – The Victorian Chamber of Commerce and Industry has computed these wages on the absolute figure and not rounded unless advised otherwise under the Award. Where you have rounded the base rate to two decimal places, you may identify a one cent discrepancy (up or down) when applying relevant penalties, loadings or overtime. Should you require further clarification in relation to this matter, please contact our Workplace Relations Helpline."

Please also note the FWO disclaimer:

"The Fair Work Ombudsman is committed to providing advice that you can rely on.

The information contained in this guide is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional."

Accordingly, the Victorian Chamber deny the claim made by Unions Ballarat that our advice causes employers to underpay employees and we stand by the accuracy of our methodology and information we provide to our subscribing members.

Yours sincerely

Richard Williams
Acting General Manager - Workplace Relations
Victorian Chamber of Commerce and Industry