



**Australian Government**  
**Attorney-General's Department**  
**Deputy Secretary**  
**Industrial Relations Group**

27 January 2021

The Hon Justice Iain Ross AO  
President  
Fair Work Commission  
PO Box 1994  
MELBOURNE VIC 3001

Dear Justice Ross

In your Statement of 21 December 2020, you asked the Department to assist in providing a potential solution to the issues identified in its submission to the Senate Economics References Committee Inquiry into the Unlawful Underpayment of Employees Remuneration.

The Department acknowledges the significant time and resources that the Fair Work Commission and industry stakeholders dedicated to the 4 yearly review of modern awards and the resultant outcomes. This, in part, focused on improving the clarity and useability of awards, such as the inclusion of schedules of calculated wage rates, introducing more uniform and logical structuring of provisions and plain language re-drafting.

The Department also acknowledges limitations of the plain language re-drafting process, where both employer and union stakeholders urged the Fair Work Commission to take a cautious, indeed minimalist, approach to changing existing award terms on the basis that such changes may have unintended consequences.<sup>1</sup>

On 20 August 2019, the Plain language project Full Bench invited any interested party to identify any term in any modern award that is ambiguous, uncertain or confusing so that the term could be considered for plain language re-drafting.<sup>2</sup> This invitation was repeated in a decision on 2 September 2019.<sup>3</sup> To the Department's knowledge, this invitation has not been widely taken up by stakeholders.

We understand that some plain-language re-drafting remains ongoing, for example a conference for plain language re-drafting of the Fast Food Industry Award and the Hair and Beauty Industry Award is scheduled on 12 February 2021.<sup>4</sup>

The Department encourages stakeholders to utilise these opportunities to further clarify aspects of modern awards that are ambiguous, uncertain or confusing.

---

<sup>1</sup> [2019] FWCFB 5409 at [16].

<sup>2</sup> [2019] FWCFB 5409 at [24].

<sup>3</sup> [2019] FWCFB 6077 at [14].

<sup>4</sup> [2021] FWCFB 293.

It is also important to recognise that work to improve the useability of modern awards is not limited to the Fair Work Commission. Improving access to and affordability of quality advice and resources also plays a key role in helping users of the modern award system to understand and navigate their obligations.

Under the Supporting Australia's Jobs and Economic Recovery package, the Government is investing to provide employers, especially those in small business, greater assistance to help them understand and comply with their obligations.

The Government will provide new funding to support these reforms, including \$47.3 million over 4 years for the Fair Work Ombudsman (FWO) to support important new measures and initiatives, including:

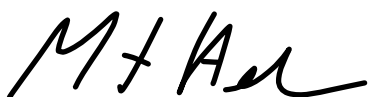
- Additional funding for the FWO to ensure its role is better understood by employers and employees and deliver the best possible guidance and services to make understanding and abiding by obligations as easy as possible.
- Working with industry to design a new, 'Employer Advisory Service' from the FWO that will make it easier for small business to comply with their obligations by seeking advice from the regulator in the knowledge that the regulator will not take legal action if they have acted honestly and followed the FWO's advice.<sup>5</sup>

The Government is also actively looking into potential regulatory technology (RegTech) solutions to leverage information technology to assist employers administer entitlements, enhance compliance and ensure employees can have confidence they are getting the correct employment conditions. We are working closely with the Fair Work Commission on this. It is being progressed by establishing a co-design process also involving the FWO, employer groups, unions and payroll companies.

As announced by the Attorney-General, the Department will also undertake a review to identify common terms from modern awards that could be consolidated into the National Employment Standards.

Given this ongoing work, we are of the view that the current issues identified as in scope by the Fair Work Commission in its consideration of award flexibility in the hospitality and retail sectors have the strongest prospect of supporting economic recovery in the short-term. Other issues may be better considered as part of the Fair Work Commission's ongoing work to enable AM2020/103 to be progressed expeditiously.

Yours sincerely



**Martin Hehir**  
Deputy Secretary  
Industrial Relations Group  
Attorney-General's Department

---

<sup>5</sup> To commence 1 July 2021, with final detail on ~~scope~~ scope and mechanics of the provision of advice and specific consequence of good faith, detailed, and accurate reliance to be consulted upon with employer groups and unions.