



# STATEMENT

*Fair Work Act 2009*

s 157—FWC may vary etc. modern awards if necessary to achieve modern awards objective  
s 576(2)(aa)—Promoting cooperative and productive workplace relations and preventing disputes

## Modern Awards Review 2023-24

(AM2023/21)

JUSTICE HATCHER, PRESIDENT  
DEPUTY PRESIDENT GOSTENCNIK  
DEPUTY PRESIDENT MILLHOUSE  
DEPUTY PRESIDENT O'NEILL  
COMMISSIONER TRAN

SYDNEY, 17 JANUARY 2024

*Modern Awards Review 2023-24 – making awards easier to use.*

[1] The [President's statement](#) of 15 September 2023 outlined the scope of the part of the Modern Awards Review 2023-24 (the review) concerned with 'making awards easier to use' as follows:

[10] The consideration in the review of the issue in paragraph [4] above will not involve any open-ended reconsideration of the terms of modern awards. The recently-completed 4 yearly review of modern awards involved a holistic review of the drafting of key modern awards, model award clauses, and award clauses relating to important common issues. The 4 yearly review was conducted in a way which encouraged interested parties to participate and resulted in a significant number of variations to modern awards. The comprehensive nature of the 4 yearly review process demanded considerable time and resources from both parties and the Commission itself. It is not intended that the Commission will engage in such a wide-ranging process for a second time. Instead, this aspect of the review will involve the following confined steps:

(1) Parties will be invited to advance any proposals to make modern awards easier to use while not reducing entitlements for award-covered employees. These proposals will be confined to the most commonly-used modern awards, namely:

- *General Retail Industry Award 2020* [[MA000004](#)]
- *Social, Community, Home Care and Disability Services Industry Award 2010* [[MA000100](#)]
- *Hospitality Industry (General) Award 2020* [[MA000009](#)]
- *Fast Food Industry Award 2010* [[MA000003](#)]
- *Restaurant Industry Award 2020* [[MA000119](#)]
- *Children's Services Award 2010* [[MA000120](#)]
- *Clerks—Private Sector Award 2020* [[MA000002](#)]

- (2) Following the receipt of any such proposals, interested parties will be given an opportunity to file written submissions in response.
- (3) The Commission will convene conferences of interested parties in order to consider and discuss any such proposals and any submissions in response.
- (4) The final report of the review will assess the merits of any proposal advanced and may recommend possible next steps if parties seek variations to modern awards, or propose that the Commission takes steps on its own motion to vary awards.’  
(underlining added)

[2] In a statement published on 4 October 2023,<sup>1</sup> we set out a timetable for the conduct of the Modern Awards Review 2023-24 which was finalised following consultation with interested parties.

[3] The timetable includes the following directions for the ‘making awards easier to use’ part of the review:

(4) **Making awards easier to use:**

22 December 2023	Interested parties to file <u>proposals/draft determinations to vary any of the identified awards</u> and accompanying submissions.
19 February 2024	Submissions in response due.
26 February – 5 April 2024	Consultation with interested parties

(underlining added)

[4] We received the following submissions in response to the above directions:

- [Australian Business Industrial and Business NSW](#)
- [Australian Chamber of Commerce and Industry](#)
- [Australian Industry Group](#)
- [Australian Retailers Association](#) (*General Retail Industry Award 2020*)
- [Australian Retailers Association](#) (*Restaurant Industry Award 2020, Hospitality Industry (General) Award 2020 and Fast Food Industry Award 2020*)
- [Australian Services Union](#)
- [Australian Workforce Compliance Council Ltd](#)
- [Business Council of Australia](#)
- [Chamber of Commerce and Industry WA](#)
- [Master Grocers Australia](#)
- [Nellers Consulting](#) (*Restaurant Industry Award 2020*)
- [Nellers Consulting](#) (*General Retail Industry Award 2020*)

[5] We consider that two of the submissions above are either outside of the scope of the review outlined at [1] above or do not comply with the direction to file proposals/draft determinations to vary any of the identified awards and accompanying submissions.

[6] The first of these is the submission from the Business Council of Australia (BCA) dated 22 December 2023. The BCA does not make any specific proposals about the seven awards that are the subject of this review. Its submission expressly states (at [17]) that '[t]he BCA does not intend to propose specific variations to the seven awards to which this Review is directed'. The submission instead makes broad proposals for reform of the awards system, including by way of legislative reform, in a way which is directly contrary to the scope of the review identified in our Statements of 15 September and 4 October 2023 referred to above. We do not propose to consider this submission in the form filed as part of this review. We will afford the BCA a further opportunity to file specific proposals to vary the seven awards the subject of this part of the review by **12:00 pm (AEDT) on Friday, 2 February 2024**. For example, we note that at [90]-[93] of its submissions, the BCA makes a generalised submission that classifications in awards should be reduced in number and 'broadbanded'. In this respect, we invite the BCA to file a specific proposal as to how this might be done in one or more of the seven awards the subject of this part of the review.

[7] The second submission is that of the Australian Workforce Compliance Council Ltd (AWCC) dated 22 December 2023. This submission does canvass a range of provisions in modern awards which are said to be problematic and requiring clarification, and we thank the AWCC for the time taken to review the awards and make a submission. However, the submission is largely lacking in any specific proposals for resolution of the identified issues. In order for parties to be able to respond properly to this submission, we direct the AWCC to file a further submission with proposed variations to awards to address the issues identified by **12:00 pm (AEDT) on Friday, 2 February 2024**. In the absence of such a further submission, we anticipate difficulty in giving proper consideration to the AWCC's submission within the scope of this review.

[8] All submissions should be sent to [awards@fwc.gov.au](mailto:awards@fwc.gov.au) and will be published on the Commission's website.

[9] We add the observation that, independent of this review, any employer or employee covered by a modern award, or any registered organisation entitled to represent the industrial interests of any such employer or employee, may at any time make an application to vary the modern award pursuant to s 158 of the *Fair Work Act 2009*. If such an application is made, it will be considered on its merits by the Commission. Thus, the scope of the current review does not in any way constrain interested parties from separately advancing proposals for changes to modern awards.

[10] A [directions hearing](#) has been listed by video using Microsoft Teams at 9:30 am (AEDT) on Wednesday, 7 February 2024 before Justice Hatcher. The purpose of the directions hearing is to discuss scheduling of the consultations for this stream of the review.



PRESIDENT

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<sup>1</sup> [\[2023\] FWCFB 179](#).