



STATEMENT

Fair Work Act 2009
s.156—4 yearly review of modern awards

4 yearly review of modern awards—Award stage—*General Retail Industry Award 2020*
(AM2017/60)

Retail industry

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT HATCHER
COMMISSIONER LEE

MELBOURNE, 23 FEBRUARY 2021

4 yearly review of modern awards – award stage – General Retail Industry Award 2020 – substantive issues.

[1] In a decision published on 24 November 2020¹ (the November 2020 decision) we rejected a claim by the Shop, Distributive and Allied Employees Association (SDA) to vary what is now clause 17.2 of the *General Retail Industry Award 2020* (the Retail Award 2020) to limit the application of junior rates.

[2] In dismissing the SDA’s claim, we identified an anomaly concerning the application of junior rates to level 4 classification employees in the Retail Award 2020 as follows:

[84] It seems to us that the application of junior rates to level 4 classification employees gives rise to an anomaly. It is conceivable that, depending on their age and service with their employer, a 20 year old tradesperson may only receive 90 per cent of the level 4 minimum rate. Such an outcome is inconsistent with the general approach adopted by the Commission to the proper fixation of minimum rates. As mentioned earlier, the tradespersons rate (level 4 in the Retail Award) should align with the C10 rate in the *Manufacturing and Associated Industries and Occupations Award 2020*; but that is not presently the case for junior employees under the Retail Award. As mentioned earlier, the concepts of uniformity and consistency underpin the fixation of minimum wages in modern awards. In a practical sense this means that the minimum wage rate for a tradesperson should be set consistently across the modern award system; this is not the case in the Retail Award because of the application of junior rates to level 4 employees.

¹ [\[2020\] FWCFB 6301](#).

[85] Further, the classification definitions associated with classification levels 5, 6, 7 and 8 all envisage the performance of work at a higher level than that performed by a level 4 employee. Accordingly, if junior rates are not applicable to level 4 employees it makes no sense to apply them to higher classification levels.²

[3] To rectify the identified anomaly we decided to vary clause 17.2 to provide that junior rates only apply to classification levels 1, 2 and 3. In a further decision issued on 4 December 2020³ we determined that the operative date of the variation should take effect from 1 May 2021, considering that the retail industry has been adversely impacted by the various public health restrictions instituted in response to the global pandemic and other wage cost increases that will impact on retail businesses in February and March 2021.

[4] A draft determination giving effect to the November 2020 decision will be issued with this Statement.

[5] The draft determination also includes a variation to the redundancy clause to insert a note that was previously omitted in error. In April 2019, the Plain Language Full Bench inserted a standard redundancy clause into the *General Retail Industry Award 2010* (Retail Award 2010).⁴ While the Retail Award 2010 was updated accordingly, the following note was omitted from the variation determination⁵ which created the Retail Award 2020:

NOTE: Redundancy pay is provided for in the NES. See sections 119–123 of the Act.

[6] We propose to reinsert this note.

[7] Interested parties have until **26 March 2021** to file any comments on the contents of the draft determination. Comments are to be sent to amod@fwc.gov.au. In the absence of any comments, the final variation determination will be issued and will take effect on 1 May 2021.

PRESIDENT

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<PR727185>

² Ibid at [84]-[85].

³ [\[2020\] FWCFB 6445](#)

⁴ [PR706959](#).

⁵ [PR722492](#)