



DECISION

Fair Work Act 2009

s.158 - Application to vary or revoke a modern award

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009

Sch. 6A, Item 5 - Application to terminate a State reference public sector transitional award

Applications by Break O'Day Council; Brighton Council; Burnie City Council; Central Coast Council; Central Highlands Council; Circular Head Council; Derwent Valley Council; Devonport City Council; Dorset Council; Flinders Council; George Town Council; Glamorgan Spring Bay Council; Huon Valley Council; Kentish Council; Kingborough Council; King Island Council; Latrobe Council; Meander Valley Council; Northern Midlands Council; Sorell Council; Southern Midlands Council; Tasman Council; Waratah-Wynyard Council; West Coast Council; West Tamar Council
(AM2013/23 and C2013/6578)

LOCAL GOVERNMENT INDUSTRY AWARD 2010

MUNICIPAL MANAGERS (TASMANIA) AWARD 2003

[TRANSITIONAL]

Tasmania

VICE PRESIDENT WATSON
DEPUTY PRESIDENT SMITH
COMMISSIONER LEE

MELBOURNE, 15 SEPTEMBER 2014

Application by Break O'Day Council & Brighton Council and Others to vary Local Government Industry Award 2010 to create a classification for a General Manager of a Tasmanian Council - Currently covered by Municipal Managers (Tasmania) Award 2003 - Further application to terminate Municipal Managers (Tasmania) Award 2003 if application to vary Local Government Industry Award 2010 is granted - Fair Work Act 2009, s.12, s.134, s.154, s.157, s.158 - Fair Work Transitional Provisions and Consequential Amendments) Act 2009, Sch. 6A Item 5.

Introduction

[1] This decision concerns two applications made by a large number of local government employers in Tasmania. The first application, under s.158 of the *Fair Work Act 2009* (the

Act), is to vary the Local Government Industry Award 2010 to insert a classification of General Manager applicable only to the applicant local government employers in Tasmania. The second application, under Item 5 of Schedule 6A to the *Fair Work Transitional Provisions and Consequential Amendments) Act 2009* (the Transitional Act) is to terminate the Municipal Managers (Tasmania) Award 2003.

[2] The applications are interrelated because they effectively seek to move award coverage from one existing State reference public sector award to a modern industry award as part of the award modernisation process. Neither application is opposed. At the hearing of the matter on 12 August 2014, Mr Collinson, of counsel, appeared with permission, for the applicant local government employers. There were no other appearances.

[3] We propose to consider each application in turn.

Application to Vary the Award

[4] Section 157 of the Act deals with the circumstances in which a modern award can be varied. In essence, it provides that the Commission can vary an award if it is satisfied that the variation is necessary to achieve the modern awards objective. That objective, expressed in s.134 of the Act is as follows:

“134 The modern awards objective

What is the modern awards objective?

(1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

- (a) relative living standards and the needs of the low paid; and
- (b) the need to encourage collective bargaining; and
- (c) the need to promote social inclusion through increased workforce participation; and
- (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and
- (da) the need to provide additional remuneration for:
 - (i) employees working overtime; or
 - (ii) employees working unsocial, irregular or unpredictable hours; or
 - (iii) employees working on weekends or public holidays; or
 - (iv) employees working shifts; and

(e) the principle of equal remuneration for work of equal or comparable value; and

(f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and

(g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and

(h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

This is the *modern awards objective*.”

[5] There is a history of award coverage for general managers of local councils in Tasmania. The Local Government Industry Award 2010 does not contain such a classification. There would be no adverse implications arising from the variation. The general managers themselves support the application. The application has the effect of retaining award coverage, at least for the time being. The classification cannot apply beyond 31 December 2014 because of the terms of s.154 of the Act. The state based difference is able to be provided under s.154 (2) because it is made under the award modernisation process which is defined in s.12 of the Act to include the process under Schedule 6A to the Transitional Act.

[6] We are satisfied that the variation is necessary to achieve the modern awards objective and will make a Determination as sought in the application with effect from the date of this decision.

Application to Terminate the Municipal Managers Award

[7] The application to terminate this State reference public sector award is governed by Item 5 of the Schedule 6A to the Transitional Act which provides as follows:

“5 Terminating State reference public sector transitional awards on application

(1) An employer or organisation that is covered by a State reference public sector transitional award (the *current award*) may apply to the FWC or the Commission to terminate the current award.

Note: The Commission ceased to exist on 31 December 2009: see item 7 of Schedule 18.

(2) The application may be made only during the period starting on the WR Act repeal day and ending at the end of 31 December 2013.

(3) The FWC or the Commission must not terminate the current award unless the FWC or the Commission is satisfied that the employees who are covered by the current award will, if the current award is terminated, be

covered by a modern award (other than the miscellaneous modern award) that, at the time of the termination, is or is likely to be in operation and that is appropriate for them.

(4) In deciding whether to terminate the current award, the FWC or the Commission must take into account the following:

- (a) the circumstances that led to the making of the current award;
- (b) the terms and conditions of employment applying in the industry or occupation in which the persons covered by the current award operate, and the extent to which those terms and conditions are reflected in the current award;
- (c) the extent to which the current award facilitates arrangements, and provides terms and conditions of employment, referred to in paragraphs 7(2)(a) and (b);
- (d) the likely impact on the persons covered by the current award of a decision to terminate, or not to terminate, the current award;
- (e) the views of the persons covered by the current award;
- (f) any other matter prescribed by the regulations.

(5) If the FWC or the Commission terminates the current award, the termination operates from the day specified in the decision to terminate the current award, being a day that is not earlier than the FW (safety net provisions) commencement day.

(6) If the Commission terminates the current award, the termination is taken, after the Commission has ceased to exist, to have been made by the FWC.

[8] We are satisfied that all of the requirements for terminating the Municipal Managers Award are satisfied. We have taken into account the circumstances relating to the factors in Item 4 and we consider that the Award should be terminated. The Award applies to a small number of employees and there is no demonstrable purpose in allowing it to continue. Terminating the Award will reduce the complexity of the award system. The termination will reduce the regulatory burden on employers and not cause any detriment to employees covered by the Award. The termination will take effect on 15 September 2014.

VICE PRESIDENT WATSON

Appearances:

R. Collinson, with D. Hodgson, for the applicant local government employers.

Hearing details:

2014.

Melbourne.

12 August.

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