



# STATEMENT

*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*  
Sch. 6, Item 9—Variation and termination of certain instruments due to enterprise instrument modernisation process

## Termination of enterprise instruments

(EM2023/1)

JUSTICE HATCHER, PRESIDENT

SYDNEY, 12 OCTOBER 2023

*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009, Schedule 6 Items 4, 6 and 9 – termination of remaining enterprise instruments – applications to make enterprise awards subsequently withdrawn – application to make an enterprise award resulted in coverage of modern award altered.*

### Introduction and background

[1] Schedule 6 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (Transitional Act) sets out the enterprise instrument modernisation process. The process allowed parties to enterprise instruments to make an application to the Commission to have these instruments modernised. Each of the following instruments are enterprise instruments:

- (a) an enterprise award-based instrument;
- (b) an enterprise preserved collective State agreement;
- (c) a Division 2B enterprise award.

[2] When considering a modernisation application, Schedule 6 required the Commission to take into account a number of factors including the circumstances that led to the making of the enterprise instrument, whether a modern award (other than what was then the *Miscellaneous Award 2010*) would cover those covered by the enterprise instrument but for the enterprise instrument and a range of other considerations.<sup>1</sup> If on application, the Commission decided to make a modern award, the enterprise instrument would either terminate when the new award came into operation<sup>2</sup> or was required to be terminated by the Commission as soon as practicable thereafter.<sup>3</sup> If the Commission decided not to make an award, the enterprise instrument terminated when that decision came into operation.<sup>4</sup>

[3] Modernisation applications could only be made to the Commission from 1 July 2009 to 31 December 2013 (the application period).<sup>5</sup> If no application was made during the application period, the enterprise instrument terminated at the end of that period.<sup>6</sup>

[4] Item 9(5) of Schedule 6 also requires the Commission to terminate any remaining ‘modernisable instruments’ after all modern enterprise awards made in the enterprise instrument modernisation process have come into operation.<sup>7</sup> A ‘modernisable instrument’ is an award-based transitional instrument, a transitional APCS (Australian Pay and Classification Scale) or a Division 2B State award.<sup>8</sup>

[5] There are a number of modernisable instruments which remain in effect after the completion of the enterprise instrument modernisation process. Attachment A to this statement sets out 51 modernisable instruments that the Commission has identified as not having been terminated. In respect of each instrument, a modernisation application was received but subsequently withdrawn before any decision was made.

[6] In addition, the ‘Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union’ known as the Australian Manufacturing Workers’ Union (AMWU) applied under item 4 of Schedule 6 to the Transitional Act (matter EM2013/112) for the Commission to make a modern enterprise award to replace the *CHC Helicopters (Aircrew/Rescue Crew) Award 2002* (CHC Award). This application was subsequently adjourned pending the outcome of a separate application made by the AMWU for modern award coverage of the employees in the industry sector concerned, including employees covered by the CHC Award.<sup>9</sup> The Commission ultimately varied a modern award to provide for modern award coverage of the employees in question.<sup>10</sup> The application remains in abeyance, with the AMWU having failed to provide advice as to its status.

[7] I consider that it is necessary to resolve the status of these modernisable instruments. Subject only to the proviso that the application in matter EM2013/112 has not yet been determined because of the circumstances earlier described, all modern enterprise awards made in the enterprise instrument modernisation process have come into operation.

[8] My *provisional* view is that:

- (1) The application in matter EM2013/112 should be dismissed pursuant to s 587(1)(a) of the *Fair Work Act 2009* (Cth), given that the employees covered by it are now covered by a modern award.
- (2) Consequent upon (1) above, the CHC Award and the 51 modernisable instruments set out in Attachment A are all required to be terminated under item 9(5) of Schedule 6 to the Transitional Act.

[9] Interested parties are invited to respond to my *provisional* view at [8] by **4:00 pm (AEDT) on Thursday, 26 October 2023**.

[10] In the absence of any submissions opposing the *provisional* view, orders dismissing the application in matter EM2013/112 and terminating the identified modernisable instruments will be issued in accordance with my *provisional* view.



PRESIDENT

**Attachment A**

<b>#</b>	<b>Matter number</b>	<b>Award</b>
1.	EM2013/158	<i>The Police Association Salaried Officers' (State) Award</i>
2.	EM2013/135	<i>Qenos Pty Ltd (Altona) Award 2003</i>
3.	EM2013/136	<i>Australian Wool Testing Authority Ltd Award 1998</i>
4.	EM2013/137	<i>Murray Goulburn Co-operative Company Limited Award 1999</i>
5.	EM2013/138	<i>Ionising Processing (Irradiation) Award 2002</i>
6.	EM2013/139	<i>Oil Industry - Mobil Oil Australia Ltd - Operations - National Union of Workers Award 2003</i>
7.	EM2013/140	<i>Caltex Terminals Award 2000</i>
8.	EM2013/141	<i>Oil Industry - Mobil Oil Australia Ltd - Altona Refinery - Award 2004</i>
9.	EM2013/131	<i>Shell Manufacturing, Distribution and Supply Award 2002</i>
10.	EM2013/132	<i>Oil Industry - BP Australia Marketing Operations - National Union of Workers Award 2002</i>
11.	EM2013/133	<i>Pacific Terminals (Australia) Pty Ltd - National Union of Workers Award 1999</i>
12.	EM2013/149	<i>Victorian Firefighting Industry Employees Interim Award 2000</i>
13.	EM2013/119	<i>Electrical Power Industry - Snowy Mountains Hydro-Electric Authority - Award 2000</i>
14.	EM2013/123	<i>Groote Eylandt Mining Company Award 2002</i>
15.	EM2013/124	<i>Oil and Gas Industry - Caltex Lytton Refinery - Maintenance Award 2000</i>
16.	EM2013/125	<i>BP Refinery (Bulwer Island) Maintenance Employees Award 2000</i>
17.	EM2013/117	<i>SMEC Award 2000</i>
18.	EM2013/103	<i>TAB Clerical and Administrative Agency Casual Staff Award 2004</i>
19.	EM2013/121	<i>Queensland Alumina Limited Award 2003</i>
20.	EM2013/106	<i>UNiTAB Limited Employees' Award - State 2003</i>
21.	EM2013/122	<i>Bauxite Operations (Comalco Aluminium Limited - Wepia) Award 2002</i>
22.	EM2013/109	<i>District Health Services - Senior Medical Officers and Resident Medical Offices' Award - State 2003</i>
23.	EM2013/110	<i>Printing (Community Newspaper Group) Award No. A 21 of 1989</i>
24.	EM2013/160	<i>The Fairfax Printers Award 1999</i>
25.	EM2013/129	<i>The Printing (Newspaper) Award 1979</i>
26.	EM2013/130	<i>Electrical, Engineering and Building Trades (West Australian Newspapers Limited) Award 1988</i>
27.	EM2013/116	<i>Print Centre (Canberra Times) Award 2000</i>
28.	EM2013/93	<i>Public Transport Authority (Transwa) Award 2006</i>
29.	EM2013/94	<i>Rail Infrastructure Maintenance Award 2001</i>
30.	EM2013/95	<i>Railway Employees' Award No. 18 of 1969</i>
31.	EM2013/99	<i>The Coal Mining Industry (Mines Rescue Staff) Award, 2005, Queensland</i>
32.	EM2013/86	<i>Minda Incorporated Award</i>

#	Matter number	Award
33.	EM2013/87	<i>Dulux Trade Centre Award 2003</i>
34.	EM2013/92	<i>Public Transport Authority Rail Car Drivers (Transperth Train Operations) Award 2006</i>
35.	EM2013/77	<i>Goldenfields Water County Council Enterprise Award 2004</i>
36.	EM2013/79	<i>Royal Flying Doctor Service Radio Staff Award 2000</i>
37.	EM2013/64	<i>Melbourne City Council Award 2001</i>
38.	EM2013/65	<i>Chubb Security Services Cash Processing and Clerical and Administrative Employees (State) Award</i>
39.	EM2013/68	<i>Public Transport Industry - Bus and Tram Operators - TransAdelaide - Award 2001</i>
40.	EM2013/69	<i>Rail Industry (TransAdelaide) Award 2002</i>
41.	EM2013/70	<i>Salaried, Professional and Technical (TransAdelaide) Award 2001</i>
42.	EM2013/71	<i>Community and Public Sector Union (Subtitlers) Award 1999</i>
43.	EM2013/73	<i>The South East Water Limited Senior Officers and Managers Award 2003</i>
44.	EM2013/75	<i>Sydney Water Award 2004</i>
45.	EM2013/80	<i>E. S. Randle &amp; Co Pty Ltd Award - State 2004</i>
46.	EM2013/157	<i>Readymix Holdings (Staff) Award 2003</i>
47.	EM2013/51	<i>Albury-Wodonga Development Corporation Award 2000</i>
48.	EM2013/47	<i>CSL Limited Salesforce Award 1999 (and others)</i>
49.	EM2013/42	<i>Australian Government Solicitor Award 2001</i>
50.	EM2013/97	<i>Postal Services Industry Award 2003</i>
51.	EM2013/48	<i>Medibank Private Limited Award 2004</i>

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<PR767092>

<sup>1</sup> *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) Sch 6 item 4(5).

<sup>2</sup> *Ibid* Sch 6 item 9(1).

<sup>3</sup> *Ibid* Sch 6 item 9(2)(a).

<sup>4</sup> *Ibid* Sch 6 item 9(3).

<sup>5</sup> *Ibid* Sch 6 item 4(3).

<sup>6</sup> *Ibid* Sch 6 item 9(4).

<sup>7</sup> *Ibid* Sch 6 item 9(5).

<sup>8</sup> *Ibid* Sch 6 item 9(2)(b).

<sup>9</sup> [\[2014\] FWCFB 5092](#).

<sup>10</sup> [\[2019\] FWCFB 4748](#); [\[2020\] FWCFB 2325](#); [2022] FWCFB 14; [2022] FWCFB 17.