



DECISION

Fair Work Act 2009

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

Mr Narangoda Amayuru Paranaheva

(AM2022/32)

Real estate industry

VICE PRESIDENT ASBURY

BRISBANE, 28 FEBRUARY 2024

Application to vary a modern award – Real Estate Industry Award 2020 – travel allowance – start and finish times – excess travel time – award varied.

[1] In my 2 January 2024 decision¹, I expressed the provisional view that the *Real Estate Industry Award 2020* (Award) should be varied to ensure that it is clear when employees are considered to be working and to clarify the circumstances in which they are entitled to be paid motor vehicle allowances. The variations proposed do not extend the operation of the Award, but simply clarify the relevant existing provisions.

[2] This followed an application made under s. 158 of the *Fair Work Act 2009* (FW Act) by Mr Narangoda Amayuru Paranaheva (Applicant) seeking to address entitlements of real estate employees where they are required to start and/or finish work at locations other than their employer’s office, often necessitating excess travel.

[3] Interested parties were invited to respond to my provisional view by 22 January 2024. An extension to 29 January 2024 was granted at the request of the Registered Real Estate Salespersons Association of South Australia (RRESSA).

[4] Subsequently, the RRESSA confirmed their support of the draft order. The Applicant also provided comment which accepted the proposed variations in principle, however made further recommendations regarding their placement within the structure of the Award.

[5] The Applicant proposed that clauses 17.11(a) and 17.11(b) should be moved to clause 13—Ordinary hours of work. The Applicant agreed that the proposed clause 17.11(c) should remain in clause 17—Allowances, as it refers to a monetary allowance.

Consideration

[6] As no submissions were made in substantive opposition to the draft determination, I confirm my provisional view. I am not persuaded to move clauses 17.11(a) and 17.11(b) as

proposed by the Applicant. The clauses are conceptually connected and removing some of them and placing them in a separate clause will likely cause confusion and impact the ability of parties to understand the way the clauses operate. I am satisfied that the variation proposed is necessary taking into account the considerations in s. 134 of the FW Act. The variation will ensure that the Award provides a fair and relevant minimum safety net of terms and conditions, by making it clear when employees are working and the circumstances in which they are entitled to be paid motor vehicle allowances.

[7] A final determination varying the Award will be issued with this decision. Given the views I expressed in my provisional decision that the amendments do no more than clarify existing Award provisions, I have decided that the determination will be operative from 1 March 2024.



VICE PRESIDENT

Printed by authority of the Commonwealth Government Printer

<MA000106 PR771014>

¹ [2024] FWC 8