



# DETERMINATION

*Fair Work Act 2009*

Sch 1, cl 111C—FWC to vary certain modern awards

## Variation of modern awards to include a right to disconnect term

(AM2024/14)

### NURSERY AWARD 2020

[MA000033]

Nursery industry

JUSTICE HATCHER, PRESIDENT  
VICE PRESIDENT ASBURY  
DEPUTY PRESIDENT O'NEILL  
COMMISSIONER MCKINNON

SYDNEY, 23 AUGUST 2024

*Variation of modern awards to include a right to disconnect term – Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024 (Cth) – award varied.*

A. Further to the decision issued by the Fair Work Commission on 23 August 2024 [[2024] FWCFB 338], the above award is varied as follows:

1. By inserting clause 13A—Employee right to disconnect as follows:

#### **13A. Employee right to disconnect**

**13A.1** Clause 13A provides for the exercise of an employee's right to disconnect under section 333M of the [Act](#).

NOTE:

- (a) Section 333M provides that, unless it is unreasonable to do so, an employee may refuse to monitor, read or respond to contact, or attempted contact, from:
- (1) their employer outside of the employee's working hours,
  - (2) a third party if the contact or attempted contact relates to their work and is outside of the employee's working hours.

- (b) Section 333M(3) lists matters that must be taken into account in determining whether an employee’s refusal is unreasonable.
- (c) Section 333M(5) provides that an employee’s refusal will be unreasonable if the contact or attempted contact is required under a law of the Commonwealth, a State or a Territory.
- (d) Section 333N provides for the resolution of disputes about whether an employee’s refusal is unreasonable and about the operation of section 333M.
- (e) The general protections in Part 3–1 of the [Act](#) prohibit an employer taking adverse action against an employee because of the employee’s right to disconnect under section 333M of the [Act](#).

**13A.2** Clause 13A applies from the following dates:

- (a) 26 August 2024—for employers that are not small business employers on this date and their employees.
- (b) 26 August 2025—for employers that are small business employers on 26 August 2024 and their employees.

**13A.3** An employer must not directly or indirectly prevent an employee from exercising their right to disconnect under the [Act](#).

**13A.4** Clause 13A.3 does not prevent an employer from contacting, or attempting to contact, an employee outside of the employee’s working hours in circumstances including to notify them of a recall to work under clause 20.2.

2. By deleting notes 1 and 2 appearing at the end of clause 30—Dispute resolution and inserting the following:

NOTE: In addition to clause 30, the [Act](#) contains dispute resolution procedures as follows:

<b>For a dispute about rights under the Act to</b>	<b>Section</b>
Request flexible working arrangements	65B
Request an extension to unpaid parental leave	76B
Exercise an employee’s right to disconnect	333N

3. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation on and takes effect from 26 August 2024 in accordance with clause 111C of Schedule 1 to the *Fair Work Act 2009* (Cth).



PRESIDENT

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