



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)

HYDROCARBONS INDUSTRY (UPSTREAM) AWARD 2020

[MA000062]

Oil and gas 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 requiring an employee to monitor, read or respond to contact, or attempted contact, from the employer outside of the employee’s working hours where:

- (a) the employee is required to be on stand-by under clause 20.3(b); and
- (b) the employer’s contact is to notify the employee that they are required to attend or perform work or give other notice about the stand-by.

13A.5 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) an emergency roster change under clause 14.1(f); or
- (b) a recall to work under clause 23.2(d) or 23.3(d).

2. By deleting notes 1 and 2 appearing at the end of clause 33—Dispute resolution and inserting the following:

NOTE: In addition to clause 33, the [Act](#) contains dispute resolution procedures as follows:

| For a dispute about rights under the Act to | Section |
|--|----------------|
| Request flexible working arrangements | 65B |

| For a dispute about rights under the Act to | Section |
|--|----------------|
| 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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