



DECISION

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 yearly review of modern awards—Casual employment and Part-time employment

(AM2014/196 and AM2014/197)

VICE PRESIDENT HATCHER
SENIOR DEPUTY PRESIDENT HAMBERGER
DEPUTY PRESIDENT KOVACIC
DEPUTY PRESIDENT BULL

SYDNEY, 24 NOVEMBER 2017

4 yearly review of modern awards - common issue - part time and casual employment.

[1] In our decision published on 5 July 2017¹ concerning part-time and casual employment issues which had arisen in the course of the 4 yearly review of all modern awards conducted under s 156 of the *Fair Work Act 2009* (FW Act) (principal decision), we set out (in paragraph [902]) the further steps which were to be taken to give effect to our decision.

Hospitality Industry (General) Award 2010, Registered and Licensed Clubs Award 2010 and Restaurant Industry Award 2010

[2] In respect of the *Hospitality Industry (General) Award*, the *Registered and Licensed Clubs Award* and the *Restaurant Industry Award*, we directed as follows:

“4. Any written submissions concerning the operative date of the part-time employment provisions to be inserted in the *Hospitality Award* and the *Clubs Award* and any residual issues shall be filed on or before **19 July 2017**.

5. Any interested party is directed to file any further evidence upon which they wish to rely and any written submissions they wish to make in respect of the proposition that the part-time employment provisions of the *Restaurants Award* be varied consistent with the variations to the *Hospitality Award* and the *Clubs Award* on or before **2 August 2017**.

6. United Voice is directed to file draft determinations for the variation of the *Hospitality Award*, the *Restaurants Award* and the *Clubs Award* to give effect to the decision regarding overtime penalty rates for casual employees on or before **19 July 2017**.

¹ [\[2017\] FWCFCB 3541](#)

7. Any interested party which wishes to respond to United Voice's draft determinations may file a written submission on or before **2 August 2017**."

[3] We have received submissions from interested parties, and draft determinations from United Voice, in response to these directions. A conference of interested parties was conducted by Hatcher VP on 13 November 2017 in order to attempt to resolve the outstanding issues. There was a consensus that the *Restaurant Industry Award* should be varied to contain a new part-time employment provision in substantially the same terms as the other two awards. There was also a consensus that the new provisions concerning part-time employment and overtime penalty rates for casual employees should have an operative date of 1 January 2018. The main issue in contention concerned whether the overtime penalty rates to be introduced for casual employees in each award should be payable in addition to the casual loading. United Voice, in its draft determination, sought that the casual loading should be payable in addition, but the various employer interests took the position that United Voice had initially applied, and run its case on the basis that, overtime penalty rates would be inclusive of the casual loading. We accept, as ultimately did United Voice, that our decision had proceeded on the basis of the application and case advanced by United Voice. Accordingly, the variation to be made to the awards to extend overtime penalty rates to casual employees will provide that those penalty rates will be payable inclusive of the casual loading. We emphasise that this does not represent any decision of principle about this issue, which may be revisited at a future time upon application.

Social, Community, Home Care and Disability Services Industry Award 2010

[4] In respect of this award, we directed as follows:

"8. ABI is directed to file a draft determination for the variation of the SCHCDSI Award to give effect to the decision concerning the guaranteed number of hours each week for part-time employees (see paragraph [641]) on or before **19 July 2017**.

9. Any interested party which wishes to respond to ABI's draft determination may file a written submission on or before **2 August 2017**."

[5] ABI filed a draft determination, but the relevant unions (the Health Services Union, the Australian Services Union and United Voice) raised a number of concerns about it. A conference to resolve the contested issues was conducted by Hatcher VP on 14 November 2017. The interested parties eventually agreed upon a form of determination to give effect to our decision, which we provisionally consider is appropriate.

General Retail Industry Award 2010, Fast Food Industry Award 2010 and Hair and Beauty Award 2010

[6] In relation to these awards, we directed:

"10. The SDA is directed to file draft determinations for the variation of the General Retail Award, the Fast Food Award, and the Hair and Beauty Award to give effect to the decision regarding overtime penalty rates for casual employees on or before **19 July 2017**.

11. Any interested party which wishes to respond to the SDA's draft determinations may file a written submission on or before **2 August 2017.**"

[7] The SDA filed draft determinations in response to these directions, and a number of drafting issues were raised by interested employer parties in response. These were for the most part resolved in a conference of the parties conducted by Hatcher VP on 13 November 2017. The only substantive issue in contest was the operative date. The Australian Industry Group submitted that the overtime provisions for casual employees should not come into effect until a period of six months had passed. The other parties were content with an operative date of 1 January 2018. We prefer the latter position. Given that the principal decision, in which we determined to extend overtime penalty rate provisions to casual employees in these awards, was issued on 5 July 2017, an operative date of 1 January 2018 will in practice amount to six months' notice of the new provision being given to employers.

[8] The Australian Industry Group also raised a concern about the use of the expression "*ordinary hourly rate of pay*" in the SDA draft determinations. This language will be retained in the determinations to be made to give effect to the principal decision, but only on the basis that it reflects the existing terminology used in the awards. This may be revisited at any later stages of the 4 yearly review which consider the drafting of the awards as a whole.

Pastoral Award 2010

[9] In relation to the *Pastoral Award*, we determined in the principal decision to reduce the minimum engagement period to two hours per shift for dairy operators who were school students and juniors. We directed:

"14. The NFF is directed to file a draft determination for the variation of the Pastoral Award to give effect to the decision regarding the minimum daily engagement period for casual dairy operators on or before **19 July 2017.**"

[10] The National Farmers' Federation (NFF) filed a draft determination in accordance with this direction. The Australian Workers' Union (AWU) raised two issues about this draft. First, it contended that paragraph [771] of the principal decision was to be read as confining the reduction in the minimum engagement period to casual employees, so that it did not extend to part-time employees. Second, it contended that the logic of our decision was that the reduced minimum engagement period would only apply to school students when schools were actually operating (and not on weekends or school holidays). These issues were canvassed in a conference conducted by Hatcher VP on 14 November 2017, but were unable to be resolved. Accordingly it is necessary for us to resolve these two issues.

[11] In the principal decision, we dealt with an application by the NFF to reduce the minimum engagement period for both casual and part-time employees. Our conclusion that the minimum engagement was to be reduced was intended to be responsive to this application and to apply to both types of employment, notwithstanding any ambiguity of expression in paragraph [771] of the principal decision. The operation of the variation is to be confined to employees who are full-time secondary school students 18 years and younger. However we do not consider it practical to confine its operation to school days, since this will lead to inconsistency in working hours patterns and place the burden on employers to identify which days are school days for their school student employees (which might, for example, differ

depending upon whether they are public or private school students). The variation to be made will reflect this.

Wine Industry Award 2010

[12] In relation to this award, we directed:

“15. The SAWIA is directed to file a draft determination for the variation of the Wine Industry Award to give effect to the decision regarding the minimum daily engagement period for casual employees on or before **19 July 2017**.”

16. Any interested party which wishes to respond to the NFF’s draft determination or the SAWIA’s draft determination may file a written submission on or before **2 August 2017**.”

[13] The South Australian Wine Industry Association (SAWIA) filed a draft determination in accordance with the directions, but a number of issues were raised in relation to it in submissions filed by United Voice and the AWU. A conference about the disputed issues was conducted by Hatcher VP on 14 November 2017, and the parties in attendance were able to agree upon the terms of the variation to give effect to the principal decision.

Passenger Vehicle Transportation Award 2010

[14] In paragraph [824] of the principal decision, we set out a provisional variation to this award to clarify the operation of the minimum engagement provision. We directed:

“17. APTIA and TWU are directed to provide any further submissions they wish to make in relation to the proposed variation to the casual minimum engagement provision in Bus Award on or before **2 August 2017**.”

[15] Neither party took issue with this proposed variation.

Road Transport (Long Distance Operations) Award 2010

[16] In paragraph [842] of the principal decision, we set out some general principles relevant to the introduction of a part-time employment provision in this award. We directed:

“18. The Ai Group, the TWU and any other interested parties are directed to confer in relation to the decision regarding the introduction of part-time employment provisions in the Long Distance Award. A member of the Commission will be made available to assist if the parties request this to occur.”

[17] On 17 November 2017 Hamberger SDP conducted a conference of interested parties in order to attempt to finalise the terms of a part-time employment provision consistent with the principles stated in the principal decision. On 23 November the parties filed an agreed proposal for a variation to the award to provide for part-time employment in this award. We provisionally consider this proposal to be appropriate subject to some minor drafting modifications.

Rail Industry Award 2010

[18] In relation to this award, we directed:

“19. The Rail Employers are directed to prepare a draft determination to give effect to the decision regarding overtime and penalty rates in the Rail Industry Award on or before **19 July 2017**.

20. The RTBU and any other interested party which wishes to respond to the Rail Employers’ draft determination may file a written submission on or before **2 August 2017**.”

[19] On 20 October 2017 the rail employers filed a draft variation to give effect to the principal decision which had been agreed with the Australian Rail, Tram and Bus Industry Union. We consider, on a provisional basis, that the agreed terms of the variation are appropriate.

Draft determinations and further submissions

[20] The [schedule](#) to this decision sets out draft determinations for the variation of the 12 awards referred to above to give effect to our principal decision. Any interested party may on or before **5.00pm Friday 1 December 2017** file further submissions concerning the form in which the variations have been drafted. We will then proceed to make the variations in final form.

[21] At a subsequent stage of the 4 yearly review, the provisions the subject of the determinations are likely to be re-drafted in accordance with plain language drafting principles. Interested parties will be given an opportunity to make submissions about any such re-drafting at the appropriate time.

Other outstanding issues

Casual conversion

[22] In relation to the issue of casual conversion dealt with in the principal decision, we directed:

“1. Any further written submissions which any interested party wishes to make concerning the proposed model casual conversion clause, including whether it requires adaptation to meet the circumstances of particular awards, shall be filed on or before **2 August 2017**.

2. Any further written submissions which any interested party wishes to make concerning whether the notification requirement in any existing casual conversion clause in any modern award should be modified consistent with the notification requirement in the proposed model casual conversion shall be filed on or before **2 August 2017**.”

[23] A number of submissions were received in response to these directions. In relation to most awards, no party requested the opportunity to adduce further evidence or make further

oral submissions in relation to this issue. In relation to these awards, a further decision dealing with the outstanding contested issues will be issued in due course based on the written submissions received to date. However in the case of the *Meat Industry Award 2010* and the *Stevedoring Industry Award 2010*, there is a strong contest as to whether any form of casual conversion clause should be introduced into these awards, and parties have requested a further hearing. Hamberger SDP conducted a conference of interested parties in relation to the *Meat Industry Award* on 16 November 2017, but the issues in dispute were not resolved. Accordingly it will be necessary for us to have a further hearing in relation to these awards. The directions and listing for this hearing are set out at the end of this decision.

Minimum engagement period for casual employees

[24] In relation to this issue, we directed:

“3. Any further written submissions which any interested party wishes to make concerning the provisional view of the Full Bench to include a 2 hour daily minimum engagement period for casual employees in modern awards which currently do not contain a daily minimum engagement period for casual employees shall be filed on or before **2 August 2017**.”

[25] A number of submissions were received in response to this direction. The only submissions which took issue with the provisional view expressed in paragraph [408] of the principal decision concerned the *Local Government Industry Award 2010* and the *Higher Education (Academic Staff) Award 2010*. Regarding the *Local Government Industry Award*, Local Government NSW has requested to be heard orally in addition to their submissions, and this will be accommodated in accordance with the directions and listing appearing at the end of this decision. Regarding the *Higher Education (Academic Staff) Award*, no party has requested an additional hearing. Accordingly, whether we proceed with the provisional view in respect of this award will be determined on the papers in due course.

[26] The Australian Industry Group has identified in a letter sent to the Commission on 8 August 2017 three awards which were mistakenly included in Attachment G to the principal decision.² These awards already have a minimum engagement for casual employees and will therefore not be varied in accordance with the provisional view.

[27] For the remainder of the awards, draft determinations will be published shortly. Once published, parties will have 7 days to make any further submissions about the form of the variations. Final determinations will then be made.

Horticulture Industry Award 2010

[28] In relation to this award, we directed:

“12. Any interested party is directed to file any further evidence upon which they wish

² *Cleaning Services Award 2010, Corrections and Detention (Private Sector) Award 2010, Security Services Industry Award 2010*

to rely and any written submissions they wish to make concerning the decision regarding ordinary hours of work and overtime for casual employees under the Horticulture Award on or before **2 August 2017**.

13. The AWU, the NFF, ABI, the Ai Group and other interested parties are directed to confer in relation to the the decision regarding ordinary hours of work and overtime for casual employees under the Horticulture Award. A member of the Commission will be made available to assist if the parties request this to occur.”

[29] In response to this direction, the NFF has filed a number of witness statements upon which it wishes to rely in addition to extensive submissions. The submissions filed by the other parties indicate that there is a substantive contest about the terms of the variation which should be made by the Commission to give effect to the principal decision. The AWU has indicated that it wishes to cross-examine the NFF’s witnesses. Accordingly there will need to be a further hearing in relation to this award.

Further hearing

[30] There will be a further hearing in relation to the following outstanding issues at **10.00am on 1 and 2 February 2018**. These are as follows:

- Casual conversion clause for the *Meat Industry Award 2010* and the *Stevedoring Industry Award 2010*
- Minimum casual period for casual employees in the *Local Government Industry Award 2010*
- Ordinary hours of work and overtime for casual employees in the *Horticulture Award 2010*

[31] There will be a directions hearing in order to program the further hearing before Hatcher VP on **11.00am Monday 29 January 2018**. The following directions are made:

- (1) Any interested party in relation to the *Meat Industry Award 2010* and the *Stevedoring Industry Award 2010* is directed to file any further evidence upon which they wish to rely on in relation to the outstanding issues concerning casual conversion on or before **5.00pm Friday 22 December 2017**.
- (2) Any interested party in relation to the *Local Government Industry Award 2010* is directed to file any further evidence upon which they wish to rely on in relation to the outstanding issues concerning the minimum engagement period on or **before 5.00pm Friday 22 December 2017**.
- (3) Any evidence in reply to the evidence filed by the NFF on 18 August 2017 concerning the *Horticulture Industry Award 2010* shall be filed on or before **5.00pm Friday 22 December 2017**.

VICE PRESIDENT

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SCHEDULE OF DRAFT DETERMINATIONS

MA000009 PRXXXXXX



DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—Casual Employment and Part-time employment

(AM2014/196 and AM2014/197)

HOSPITALITY INDUSTRY (GENERAL) AWARD 2010

[MA000009]

Hospitality industry

VICE PRESIDENT HATCHER

SENIOR DEPUTY PRESIDENT HAMBERGER

DEPUTY PRESIDENT KOVACIC

DEPUTY PRESIDENT BULL

SYDNEY, XX NOVEMBER 2017

4 yearly review of modern awards – Part-time employment and Casual employment – Hospitality Industry (General) Award 2010.

A. Further to the decision issued on 5 July 2017 in AM2014/196 and AM2014/197 ([\[2017\] FWCFB 3541](#)), it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009* that the *Hospitality Industry (General) Award 2010* be varied as follows:

1. By deleting clause 12 and inserting the following:

12. Part-time employment

12.1 An employer may employ part-time employees in any classification in this award.

12.2 A part-time employee is an employee who is employed in a classification in **Schedule D—Classification Definitions** and who:

- (a) is engaged to work at least 8 and less than 38 ordinary hours per week or, where the employer operates a roster, an average of at least 8 and fewer than 38 hours per week over the roster cycle;
- (b) has reasonably predictable hours of work; and

- (c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

12.3 At the time of engagement the employer and the part-time employee will agree in writing upon:

- (a) the number of hours of work which is guaranteed to be provided and paid to the employee each week or, where the employer operates a roster, the number of hours of work which is guaranteed to be provided and paid to the employee over the roster cycle (**the guaranteed hours**); and
- (b) the days of the week, and the periods in each of those days, when the employee will available to work the guaranteed hours (**the employee's availability**).

12.4 Any change to the guaranteed hours may only occur with the written consent of the part-time employee.

12.5 The employer may roster the working of the employee's guaranteed hours and any additional hours in accordance with **clause 29.2—Part-time employees** and **clause 30—Rostering**, provided that:

- (a) the employee may not be rostered for work for any hours outside the employee's availability; and
- (b) the employee must have two days off each week.

12.6 Where a part-time employee has over a period of at least 12 months regularly worked a number of ordinary hours that is in excess of the guaranteed hours, the employee may request in writing that the employer agree to increase the guaranteed hours. If the employer agrees to the request, the new agreement concerning guaranteed hours will be recorded in writing. The employer may refuse the request only upon reasonable business grounds, and such refusal must be provided to the employee in writing and specify the grounds for refusal.

12.7 Where there has been a genuine and ongoing change in the employee's personal circumstances, the employee may alter the days and hours of the employee's availability on 14 days' written notice to the employer. If the alteration to the employee's availability cannot reasonably be accommodated by the employer within the guaranteed hours then, despite clause 12.4, those guaranteed hours will no longer apply and the employer and the employee will need to reach a new agreement in writing concerning guaranteed hours in accordance with clause 12.3(a).

12.8 All time worked in excess of:

- (a) 38 hours per week or, where the employee works in accordance with a roster, an average of 38 hours per week over the roster cycle; or
- (b) the maximum hours limitations specified in clause 29.2; or
- (c) the employee's rostered hours;

will be overtime and paid for at the rates prescribed in **clause 33.3—Overtime rates**.

12.9 An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 10.5.

12.10 A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.

12.11 A part-time employee who immediately prior to 1 January 2018 has a written agreement with their employer for a regular pattern of hours is entitled to continue to be rostered in accordance with that agreement, unless that agreement is replaced by a new written agreement made in accordance with clause 12.3.

2. By deleting clause 13.2 and inserting the following:

13.2 A casual employee may be engaged to work:

- (a) for a maximum of 12 hours per day or per shift;
- (b) for a maximum of 38 hours per week or, where the casual employee works in accordance with a roster, an average of 38 hours per week over the roster cycle (which may not exceed 4 weeks).

3. By renumbering clauses 13.3 and 13.4 as 13.5 and 13.6 respectively.

4. By inserting a new clause 13.3 as follows:

13.3 On each occasion a casual employee is required to attend work they are entitled to a minimum payment for two hours' work.

5. By inserting a new clause 13.4 as follows:

13.4 All time worked in excess of the hours prescribed in clause 13.2 will be overtime and paid for at the rates prescribed in **clause 33.3—Overtime rates**.

6. By deleting the first sentence of clause 29.2 and inserting the following:

A part-time employee's rostered hours of work under clause 12.5 must meet the following conditions:

7. By deleting clause 33.1(a) and inserting the following:

- (a) Subject to clause 33.1(b) an employer may require an employee to work reasonable overtime at overtime rates.

6. By deleting clause 33.1(b) and inserting the following:

- (b) A part-time employee is paid at overtime rates in the circumstances specified in clause 12.8.

7. By inserting a new clause 33.2(c) as follows:

- (c) A casual employee is paid at overtime rates in the circumstances specified in clause 13.4.

8. By deleting clauses 33.3(a) and (b) and inserting the following:

- (a) The following overtime rates are payable to an employee, depending on the time at which the overtime is worked:

- (i) Monday to Friday: **150%** of their normal rate of pay for the first two hours of overtime; and **200%** of their ordinary hourly rate of pay for the rest of the overtime.

- (ii) Between midnight Friday and midnight Sunday: **200%** of their ordinary hourly rate of pay.

- (b) When a full-time or part-time employee works overtime on a rostered day off the following apply:

- (i) Subject to clause 33.3(b)(ii), the employee shall be paid **200%** of their ordinary hourly rate of pay for at least four hours even if they work for less than four hours.

- (ii) The four hour minimum payment does not apply to work which is part of the normal roster which began to the day before the rostered day off or when overtime worked is continuous from the previous day's duty.

9. By deleting clause 37.1(c) and inserting the following:

(c) Arrangements for part-time employees

Part-time employees are entitled to public holidays prescribed in s.115 of the Act without loss of pay if those public holidays fall on days on which hours of work are rostered under clause 12.5. Part-time employees who work on a public holiday must be paid in accordance with clause 32.

B. This determination comes into force on and from 1 January 2018. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period that starts on or after 1 January 2018.

VICE PRESIDENT

MA000058 PRXXXXXX



DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—Casual Employment and Part-time employment

(AM2014/196 and AM2014/197)

REGISTERED AND LICENSED CLUBS AWARD 2010

[MA000058]

Licensed and registered clubs industry

VICE PRESIDENT HATCHER
SENIOR DEPUTY PRESIDENT HAMBERGER
DEPUTY PRESIDENT KOVACIC
DEPUTY PRESIDENT BULL

SYDNEY, XX NOVEMBER 2017

4 yearly review of modern awards – Part-time employment and Casual employment – Registered and Licensed Clubs Award 2010.

A. Further to the decision issued on 5 July 2017 in AM2014/196 and AM2014/197 ([\[2017\] FWCFB 3541](#)), it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009* that the *Registered and Licensed Clubs Award 2010* be varied as follows:

1. By deleting clause 10.4 and inserting the following:

10.4 Part-time employees

- (a) An employer may employ part-time employees in any classification in this award.
- (b) A part-time employee is an employee who is employed in a classification in **Schedule C—Classification Definitions** and who:
 - (i) is engaged to work at least 8 and less than 38 ordinary hours per week or, where the employer operates a roster, an average of at least 8 and fewer than 38 hours per week over the roster cycle;
 - (ii) has reasonably predictable hours of work; and

- (i) 38 hours per week or, where the employee works in accordance with a roster, an average of 38 hours per week over the roster cycle; or
- (ii) the employee's rostered hours;

will be overtime and paid for at the rates prescribed in **clause 28.3**.

- (i) An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 10.5.
- (j) A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.
- (k) A part-time employee who immediately prior to 1 January 2018 has a written agreement with their employer for a regular pattern of hours is entitled to continue to be rostered in accordance with that agreement, unless that agreement is replaced by a new written agreement made in accordance with clause 10.4(c).

2 By inserting a new clause 10.5(e) as follows:

- (e) A casual employee shall be paid at the overtime rates specified in clause 28.3 for any work in excess of:
 - (i) 12 hours per day or per shift;
 - (ii) in excess of 38 hours per week or, where the employee works in accordance with a roster, an average of 38 hours per week over the roster cycle (which may not exceed 4 weeks).

3. By deleting clauses 28.1 and 28.2 and inserting the following:

28.1 An employer may require an employee to work reasonable overtime at overtime rates.

28.2 All time worked by a full-time in excess of the hours and/or outside the spread of hours or outside the rostered hours prescribed in this award will be overtime and will be paid for at the overtime rates specified in clause 28.3.

4. By deleting clause 28.7 and inserting the following:

28.7 An employee required to work overtime for more than two hours without being notified on the previous day or earlier that they will be so required to work will be either supplied with a meal by the employer or be paid the allowance prescribed in clause 18.1(a)(i).

5. By renumbering clauses 28.3 to 28.7 as 28.4 to 28.8 respectively.

6. By inserting a new clause 28.3 as follows:

28.3 The following overtime rates are payable to an employee, depending on the time at which the overtime is worked:

- (a) Monday to Friday inclusive - **150%** for the first two hours and **200%** for all work thereafter;
- (b) between midnight Friday and midnight Saturday - **175%** for the first two hours and **200%** for all work thereafter;
- (c) between midnight Saturday and midnight Sunday - **200%** for all time worked;
- (d) all work performed on a public holiday - **250%** for all time worked, with a minimum payment of four hours at the rate of **250%**;
- (e) all work performed on a rostered day off to which an employee is entitled - **200%**, with a minimum payment of four hours at the rate of **200%**.

B. This determination comes into force on and from 1 January 2018. . In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period that starts on or after 1 January 2018.

VICE PRESIDENT

MA000119 PRXXXXXX



DRAFT DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—Casual Employment and Part-time employment

(AM2014/196 and AM2014/197)

RESTAURANT INDUSTRY AWARD 2010

[MA000119]

Restaurant industry

VICE PRESIDENT HATCHER
SENIOR DEPUTY PRESIDENT HAMBERGER
DEPUTY PRESIDENT KOVACIC
DEPUTY PRESIDENT BULL

SYDNEY, XX NOVEMBER 2017

4 yearly review of modern awards – Part-time employment and Casual employment – Restaurant Industry Award 2010.

A. Further to the decision issued on 5 July 2017 in AM2014/196 and AM2014/197 ([\[2017\] FWCFB 3541](#)), it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009* that the *Restaurant Industry Award 2010* be varied as follows:

1. By deleting clause 12 and insert the following:

12. Part-time employment

12.1 An employer may employ part-time employees in any classification in this award.

12.2 A part-time employee is an employee who is employed in a classification in **Schedule D—Classification Definitions** and who:

- (a) is engaged to work at least 8 and less than 38 ordinary hours per week or, where the employer operates a roster, an average of at least 8 and fewer than 38 hours per week over the roster cycle;
- (b) has reasonably predictable hours of work; and

- (c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

12.3 At the time of engagement the employer and the part-time employee will agree in writing upon:

- (a) the number of hours of work which is guaranteed to be provided and paid to the employee each week or, where the employer operates a roster, the number of hours of work which is guaranteed to be provided and paid to the employee over the roster cycle (**the guaranteed hours**); and
- (b) the days of the week, and the periods in each of those days, when the employee will available to work the guaranteed hours (**the employee's availability**).

12.4 Any change to the guaranteed hours may only occur with the written consent of the part-time employee.

12.5 The employer may roster the working of the employee's guaranteed hours and any additional hours in accordance with **clause 31—Hours of work**, provided that:

- (a) the employee may not be rostered for work for any hours outside the employee's availability; and
- (b) the employee must have two days off each week.

12.6 Where a part-time employee has over a period of at least 12 months regularly worked a number of ordinary hours that is in excess of the guaranteed hours, the employee may request in writing that the employer agree to increase the guaranteed hours. If the employer agrees to the request, the new agreement concerning guaranteed hours will be recorded in writing. The employer may refuse the request only upon reasonable business grounds, and such refusal must be provided to the employee in writing and specify the grounds for refusal.

12.7 Where there has been a genuine and ongoing change in the employee's personal circumstances, the employee may alter the days and hours of the employee's availability on 14 days' written notice to the employer. If the alteration to the employee's availability cannot reasonably be accommodated by the employer within the guaranteed hours then, despite clause 12.4, those guaranteed hours will no longer apply and the employer and the employee will need to reach a new agreement in writing concerning guaranteed hours in accordance with clause 12.3(a).

12.8 All time worked in excess of:

- (a) 38 hours per week or, where the employee works in accordance with a roster, an average of 38 hours per week over the roster cycle; or
- (b) the maximum hours limitations specified in clause 31.2; or
- (c) the employee's rostered hours;

will be overtime and paid for at the rates prescribed in **clause 33.2—Overtime rates**.

12.9 An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 13.

12.10 A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.

12.11 A part-time employee who immediately prior to 1 January 2018 has a written agreement with their employer for a regular pattern of hours is entitled to continue to be rostered in accordance with that agreement, unless that agreement is replaced by a new written agreement made in accordance with clause 12.3.

2. By deleting clause 13.2 and inserting the following:

13.2 A casual employee may be engaged to work:

- (a) for a maximum of 12 hours per day or per shift;
- (b) for a maximum of 38 hours per week or, where the casual employee works in accordance with a roster, an average of 38 hours per week over the roster cycle (which may not exceed 4 weeks).

3. By deleting clause 13.3 and inserting the following:

13.3 On each occasion a casual employee is required to attend work they are entitled to a minimum payment for two hours' work.

4. By inserting a new clause 13.4 as follows:

13.4 All time worked in excess of the hours prescribed in clause 13.2 will be overtime and paid for at the rates prescribed in **clause 33.2—Overtime rates**.

5. By deleting clause 24.1(a) and inserting the following:

24.1 Meal allowance

- (a) An employee required to work overtime for more than two hours without being notified on the previous day or earlier that the employee will be so required to work will be supplied with a meal by the employer or paid a meal allowance of **\$12.71**.

6. By deleting clause 33.1 and inserting the following:

33.1 Requirement to pay overtime rates

- (a) Full-time employees shall be paid at overtime rates for any work done outside of the spread of hours or rostered hours set out in clause 31—Hours of work.

- (b) Part-time employees shall be paid at overtime rates in the circumstances specified in clause 12.8.
- (c) Casual employees shall be paid at overtime rates in the circumstances specified in clause 13.4.

B. This determination comes into operation from 1 January 2018. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period that starts on or after 1 January 2018.

VICE PRESIDENT

MA000100 PRXXXXXX



DRAFT DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—Casual Employment and Part-time employment

(AM2014/196 and AM2014/197)

SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY

[MA000100]

Social, community, home care and disability services

VICE PRESIDENT HATCHER

SENIOR DEPUTY PRESIDENT HAMBERGER

DEPUTY PRESIDENT KOVACIC

DEPUTY PRESIDENT BULL

SYDNEY, XX NOVEMBER 2017

4 yearly review of modern awards – Part-time employment and Casual employment – Social, Community, Home Care and Disability Services Industry Award 2010.

A. Further to the decision issued on 5 July 2017 in AM2014/196 and AM2014/197 ([\[2017\] FWCFB 3541](#)), it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009* that the *Social, Community, Home Care and Disability Services Industry Award 2010* be varied as follows:

1. By deleting clause 10.3(c) and inserting the following:

(c) Before commencing employment, the employer and employee will agree in writing on:

(i) on a regular pattern of work including the number of hours to be worked each week, and

(ii) the days of the week the employee will work and the starting and finishing times each day.

2. By inserting a new clause 10.3(d) as follows:

- (d) The agreed regular pattern of work does not necessarily have to provide for the same guaranteed number of hours in each week

3. By inserting a new clause 10.3(e) as follows:

- (e) The agreement made pursuant to clause 10.3(c) may subsequently be varied by agreement between the employer and employee in writing. Any such agreement may be ongoing or for a specified period of time.

B. This determination comes into operation from 1 January 2018. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period that starts on or after 1 January 2018.

VICE PRESIDENT

MA000004 PRXXXXXX



DRAFT DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—Casual Employment and Part-time employment

(AM2014/196 and AM2014/197)

GENERAL RETAIL INDUSTRY AWARD 2010

[MA000004]

Retail industry

VICE PRESIDENT HATCHER
SENIOR DEPUTY PRESIDENT HAMBERGER
DEPUTY PRESIDENT KOVACIC
DEPUTY PRESIDENT BULL

SYDNEY, XX NOVEMBER 2017

4 yearly review of modern awards – Part-time employment and Casual employment – General Retail Industry Award 2010.

A. Further to the decision issued on 5 July 2017 in AM2014/196 and AM2014/197 ([\[2017\] FWCFB 3541](#)), it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009* that the *General Retail Industry Award 2010* be varied as follows:

1. By deleting the words “other than a casual” in clause 29.1(a).
2. By deleting clause 29.2 and inserting the following:

29.2 Overtime

- (a) Hours worked in excess of the ordinary hours of work, outside the span of hours (excluding shiftwork), or roster conditions prescribed in clauses 27 and 28 are to be paid at time and a half for the first three hours and double time thereafter.
- (b) Hours worked by part-time employees in excess of the agreed hours in clause 12.2 or as varied under clause 12.3 will be paid at time and a half for the first three hours and double time thereafter.

(c) Hours worked by casual employees:

- (i) in excess of 38 ordinary hours per week or, where the casual employee works in accordance with a roster, in excess of 38 ordinary hours per week averaged over the course of the roster cycle;
- (ii) outside of the span of ordinary hours for each day specified in clause 27.2(a);
- (iii) in excess of 11 hours on one day of the week and in excess of 9 hours on any other day of the week;

shall be paid at **175%** of the ordinary hourly rate of pay for the first three hours and **225%** of the ordinary hourly rate of pay thereafter (inclusive of the casual loading).

- (f) The rate of overtime for full-time and part-time employees on a Sunday is double time, and on a public holiday is double time and a half.
- (g) The rate of overtime for casual employees on a Sunday is **225%** of the ordinary hourly rate of pay, and on a public holiday is **275%** of the ordinary hourly rate of pay (inclusive of the casual loading).
- (h) Overtime is calculated on a daily basis.

B. This determination comes into force on and from 1 January 2018. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period that starts on or after 1 January 2018.

VICE PRESIDENT

MA000003 PRXXXXXX



DRAFT DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—Casual Employment and Part-time employment

(AM2014/196 and AM2014/197)

FAST FOOD INDUSTRY AWARD 2010

[MA000003]

Fast food industry

VICE PRESIDENT HATCHER
SENIOR DEPUTY PRESIDENT HAMBERGER
DEPUTY PRESIDENT KOVACIC
DEPUTY PRESIDENT BULL

SYDNEY, XX NOVEMBER 2017

4 yearly review of modern awards – Part-time employment and Casual employment – Fast Food Industry Award 2010.

A. Further to the decision issued on 5 July 2017 in AM2014/196 and AM2014/197 ([\[2017\] FWCFB 3541](#)), it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Fast Food Industry Award 2010* be varied as follows:

1. By renumbering clauses 26.1 to 26.4 as 26.2 to 26.5 respectively.
2. By deleting the paragraph of text appearing under the clause heading for clause 26—Overtime and inserting the following new clause 26.1 as follows:

26.1 Rate of overtime

- (a) The rate of overtime for full time and part-time employees shall be time and a half for the first two hours on any one day and at the rate of double time thereafter, except on a Sunday which shall be paid for at the rate of double time and on a Public Holiday which shall be paid for at the rate of double time and a half.
- (b) The rate of overtime for casual employees shall be **175%** of the ordinary hourly rate of pay for the first two hours on any one day and **225%** of the

ordinary hourly rate of pay thereafter, except on a Sunday which shall be **225%** of the ordinary hourly rate of pay and **275%** on a Public Holiday (inclusive of the casual loading).

3. By deleting clauses 26.2 and inserting the following:

26.2 A full-time or part-time employee shall be paid overtime for all work as follows:

(a) In excess of:

(i) 38 hours per week or an average of 38 hours per week averaged over a four week period; or

(ii) five days per week (or six days in one week if in the following week ordinary hours are worked on not more than four days); or

(iii) eleven hours on any one day; or

(b) Before an employee's rostered commencing time on any one day; or

(c) After an employee's rostered ceasing time on any one day; or

(d) Outside the ordinary hours of work; or

(e) Hours worked by part-time employees in excess of the agreed hours in clause 12.2 or as varied under clause 12.3.

4. By renumbering clauses 26.3 to 26.5 as 26.4 to 26.6 respectively.

5. By inserting a new clause 26.3 as follows:

26.3 A casual employee shall be paid overtime for all work in excess of:

(a) 38 hours per week or an average of 38 hours per week averaged over a four week period; or

(b) eleven hours on any one day.

6. By deleting clause 26.4 and inserting the following:

26.4 Where an employee works overtime on a Sunday and that work is not immediately preceding or immediately following ordinary hours, then that employee must be paid double time with a minimum payment of four hours at such rate. The rate for a casual employee shall be **225%** of the ordinary hourly rate of pay (inclusive of the casual loading).

7. By deleting the words “other than a casual” from clause 26.6(a).

B. This determination comes into operation from 1 January 2018. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period that starts on or after 1 January 2018.

VICE PRESIDENT

MA000005 PRXXXXXX



DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—Casual Employment and Part-time employment

(AM2014/196 and AM2014/197)

HAIR AND BEAUTY INDUSTRY AWARD 2010

[MA000005]

Hair and beauty industry

VICE PRESIDENT HATCHER

SENIOR DEPUTY PRESIDENT HAMBERGER

DEPUTY PRESIDENT KOVACIC

DEPUTY PRESIDENT BULL

SYDNEY, XX NOVEMBER 2017

4 yearly review of modern awards – Part-time employment and Casual employment – Hair and Beauty Industry Award 2010

A. Further to the decision issued on 5 July 2017 in AM2014/196 and AM2014/197 ([\[2017\] FWCFB 3541](#)), it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009* that the *Hair and Beauty Industry Award 2010* be varied as follows:

1. By deleting the words “other than a casual” from clause 31.1(a).
2. By renumbering clauses 31.2(b), (c) and (d) as 31.2(c), (d) and (e) respectively.
3. By inserting new clause 31.2(b) as follows:
 - (b) Hours worked by casual employees:
 - (i) in excess of 38 hours per week or, where the casual employee works in accordance with a roster, in excess of 38 hours per week averaged over the course of the roster cycle;
 - (ii) in excess of 10 ½ hours per day;

shall be paid at **175%** of the ordinary hourly rate of pay for the first three hours and **225%** of the ordinary hourly rate of pay thereafter (inclusive of the casual loading).

B. This determination comes into operation from 1 January 2018. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period that starts on or after 1 January 2018.

VICE PRESIDENT

MA000035 PRXXXXXX



DRAFT DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—Casual Employment and Part-time employment

(AM2014/196 and AM2014/197)

PASTORAL INDUSTRY AWARD 2010

[MA000035]

Agricultural industry

VICE PRESIDENT HATCHER
SENIOR DEPUTY PRESIDENT HAMBERGER
DEPUTY PRESIDENT KOVACIC
DEPUTY PRESIDENT BULL

SYDNEY, XX NOVEMBER 2017

4 yearly review of modern awards – Part-time employment and Casual employment – Pastoral Industry Award 2010.

A. Further to the decision issued on 5 July 2017 in AM2014/196 and AM2014/197 ([\[2017\] FWCFB 3541](#)), it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009* that the *Pastoral Award 2010* be varied as follows:

1. By deleting clause 10.3(e) and inserting the following:
 - (e) Subject to paragraph (f), an employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.
2. By renumbering clauses 10.3(f) and 10.3(g) as 10.3(g) and 10.3(h) respectively.
3. By inserting a new clause 10.3(f) as follows:
 - (f) An employer is required to roster a part-time employee for a minimum of two consecutive hours on any shift where all of the following apply:
 - (i) the employee is engaged to perform the work of a dairy operator;

- (ii) the employee is aged 18 years or younger; and
- (iii) the employee is a full-time secondary school student.

4. By deleting clause 10.4(f) and inserting the following:

- (f) Subject to clause 10.4(g), on each occasion a casual employee, other than a casual pieceworker, is required to attend for work, the employee is entitled to a minimum payment of three hours' work at the appropriate rate

5. By inserting a new clause 10.4(g) as follows:

- (f) On each occasion a casual employee is required to attend for work, the employee is entitled to a minimum payment of two hours' work where all of the following apply:
 - (i) the employee is engaged to perform the work of a dairy operator;
 - (ii) the employee is aged 18 years or younger; and
 - (iii) the employee is a full-time secondary school student.

B. This determination comes into operation from 1 January 2018. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period that starts on or after 1 January 2018.

VICE PRESIDENT

MA000090 PRXXXXXX



DRAFT DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—Casual Employment and Part-time employment

(AM2014/196 and AM2014/197)

WINE INDUSTRY AWARD 2010

[MA000090]

Wine industry

VICE PRESIDENT HATCHER
SENIOR DEPUTY PRESIDENT HAMBERGER
DEPUTY PRESIDENT KOVACIC
DEPUTY PRESIDENT BULL

SYDNEY, XX NOVEMBER 2017

4 yearly review of modern awards – Part-time employment and Casual employment – Wine Industry Award 2010.

A. Further to the decision issued on 5 July 2017 in AM2014/196 and AM2014/197 ([\[2017\] FWCFB 3541](#)), it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009* that the *Wine Industry Award 2010* be varied as follows:

1. By deleting clause 13.3 and inserting the following:

13.3 Minimum engagement

- (a) On each occasion a casual employee is required to attend work the employee must be paid for a minimum of four hours' work, except as set out in clause 13.3(b).

- (b) Where a casual employee is engaged to perform pruning or harvesting work and a weather event not expected at the commencement of the casual employee's work prevents the completion of four hours' work, the casual employee must be paid for a minimum of two hours' work.

B. This determination comes into operation from 1 January 2018. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period that starts on or after 1 January 2018.

VICE PRESIDENT

MA000063 PRXXXXXX



DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Casual employment and Part-time employment

(AM2014/196 and AM2014/197)

PASSENGER VEHICLE TRANSPORTATION AWARD 2010

[MA000063]

Vehicle industry

VICE PRESIDENT HATCHER
SENIOR DEPUTY PRESIDENT HAMBERGER
DEPUTY PRESIDENT KOVACIC
DEPUTY PRESIDENT BULL

SYDNEY, XX NOVEMBER 2017

4 yearly review of modern awards – Casual employment and Part-time employment – Passenger Vehicle Transportation Award 2010.

A. Further to the decision issued on 5 July 2017 in AM2014/196 and AM2014/197 ([\[2017\] FWCFB 3541](#)) and pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, the *Passenger Vehicle Transportation Award 2010* is varied as follows:

1. By inserting a new clause 10.5(e) as follows:

- (e) A casual employee solely engaged for the purpose of transportation of school children to and from school may be rostered to perform one engagement or two separate engagements per day, with a minimum payment of two hours for each separate engagement.

B. This determination comes into operation from 1 January 2018. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period on or after 1 January 2018.

VICE PRESIDENT

MA000039 PRXXXXXX



DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Casual employment and Part-time employment

(AM2014/196 and AM2014/197)

ROAD TRANSPORT (LONG DISTANCE OPERATIONS) AWARD 2010

[MA000039]

Vehicle industry

VICE PRESIDENT HATCHER

SENIOR DEPUTY PRESIDENT HAMBERGER

DEPUTY PRESIDENT KOVACIC

DEPUTY PRESIDENT BULL

SYDNEY, XX NOVEMBER 2017

4 yearly review of modern awards – Casual employment and Part-time employment – Road Transport (Long Distance Operations) Award 2010.

A. Further to the decision issued on 5 July 2017 in AM2014/196 and AM2014/197 ([\[2017\] FWCFB 3541](#)) and pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, the *Road Transport (Long Distance Operations) Award 2010* is varied as follows:

1. By deleting clause 10.1 and inserting the following:

10.1 An employee will be engaged as either a full-time, part-time or casual employee. At the time of engagement, the employer will inform each employee of their terms of engagement.

2. By renumbering clauses 10.3(a) to (d) as clauses 10.4(a) to (d).

3. By inserting a new clause 10.3 as follows:

10.3 Part-time employment

(a) A part-time employee is an employee engaged by an employer for an average of less than 38 ordinary hours per week over 28 days.

- (b) Before commencing part-time employment, the employee and employer must agree upon:
 - (i) the days of the week on which the employee will be required by the employer to commence work on a long distance operation, and
 - (ii) either the maximum number of ordinary hours of work per week, or the maximum weekly average number of ordinary hours of work calculated over a period of not more than 28 days, that the employee may perform.
- (c) The terms of any agreement made under clause 10.3(b) may be varied by genuine agreement of both the employer and employee.
- (d) The terms of any agreement made under clause 10.3(b), or any variation to it, must be recorded in writing and retained by the employer. A copy of any such record must be provided to the employee by the employer.
- (e) The maximum number of days per week that may be agreed upon under clause 10.3(b) or 10.3(c) is 3.
- (f) An employer must not direct a part-time employee to work on days that are not agreed upon in accordance with clause 10.3(b).
- (g) A part-time employee may agree to an employer request for them to work on days other than those agreed under clause 10.3(b) or 10.3(c). A part-time employee must be paid an additional **15%** on:
 - (i) the cents per kilometre (CPK) rates set out in clause 13.4;
 - (ii) the hourly driving rates set out in clause 13.5; and
 - (iii) any amount payable under clause 13.6;for driving or loading and unloading work that is undertaken in accordance with an employer request on days not agreed in accordance with clause 10.3(b) or 10.3(c).
- (h) A part-time employee who is paid by the cents per kilometre method of clause 13.4 must receive a minimum payment per day for 500 km. Where the employee is engaged according to the hourly driving rate method the minimum payment per day must be eight hours' pay.
- (i) A part-time employee's ordinary hours of work will be eight hours per day, unless the employer and employee agree in writing upon a greater number.
- (j) For the purpose of this clause, a day will mean the 24 hour period from the time the employee commences work.

4. By deleting clause 13.1 and inserting the following:

13.1 Minimum weekly rates of pay

(a) The minimum weekly rates of pay for ordinary hours of work for full-time employees are as follows:

Grade	Minimum weekly rate
	\$
1	763.80
2	777.80
3	787.50
4	796.60
5	808.20
6	831.70
7	845.60
8	866.60

(b) The agreed minimum weekly rate of pay for ordinary hours of work performed by a part-time employee will be the minimum weekly rate of pay specified in clause 13.1(a) divided by 38 and multiplied by the number of ordinary hours per week that the employee is engaged to perform under clause 10.3(b).

NOTE: The classification grades are different in the *Road Transport and Distribution Award 2010*. Grade 4 under this award is equivalent to Grade 6 under the *Road Transport and Distribution Award 2010*.

5. By deleting clause 13.2(a) and inserting the following:

(a) A full-time or part-time employee is entitled to a guaranteed minimum fortnightly payment which must be twice the weekly rate prescribed by clause 13.1 for the classification under which the employee is working. Provided that, to become entitled to this payment, the employee must be ready, willing and available to perform such duties covered by this award which the employer may from time to time require.

6. By renumbering clauses 13.2(b) to (d) as 13.2(c) to (e).

7. By inserting a new clause 13.2(b) as follows:

(b) Any amount that a part-time employee earns under this award in relation to work undertaken in accordance with an employer request to work on days other than those agreed in accordance with clause 10.3(b), or varied in accordance with clause 10.3(c), will not be taken into consideration when calculating the guaranteed minimum fortnightly payment referred to in clause 13.2. Nor will such amounts form part of the agreed minimum weekly rate of pay for ordinary hours of work performed by a part-time employee. Such amounts will instead be a payment in respect of work performed outside of an employee's ordinary hours.

8. By deleting clause 13.2(d) and inserting the following:

- (d) A full-time or part-time employee, having already earned the guaranteed fortnightly payment, and held on call for any part of the second week, must be paid on an hourly basis for the period during which the employee remains on call at the rate prescribed for the appropriate classification of this award, in addition to the guaranteed fortnightly payment.

B. This determination comes into operation from 1 January 2018. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period on or after 1 January 2018.

VICE PRESIDENT

MA000015 PRXXXX



DRAFT DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards

(AM2014/286)

RAIL INDUSTRY AWARD 2010

[MA000015]

Rail industry

VICE PRESIDENT HATCHER
SENIOR DEPUTY PRESIDENT HAMBERGER
DEPUTY PRESIDENT KOVACIC
DEPUTY PRESIDENT BULL

SYDNEY, XX NOVEMBER 2017

4 yearly review of modern awards – Casual employment and Part-time employment – Rail Industry Award 2010

A. Further to the decision issued on 5 July 2017 in AM2014/196 and AM2014/197 ([\[2017\] FWCFB 3541](#)), it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009* that the *Rail Industry Award 2010* be varied as follows:

1. By deleting clause 10.3 and inserting the following:

10.3 Casual Employment

- (a) A casual employee is an employee who is engaged and paid as a casual employee.
- (b) A casual employee's ordinary hours of work are the lesser of 38 hours per week or the hours required to be worked by the employer.
- (c) **Casual loading**

For each ordinary hour worked, a casual employee must be paid:

- (i) the ordinary hourly rate; and

(ii) a loading of 25% of the ordinary hourly rate,

(d) Casual penalty rates

(i) A casual employee will be paid **175%** of the ordinary hourly rate for the first three hours, and **225%** of the ordinary hourly rate thereafter, for any overtime hours on a Monday to Friday.

(ii) A casual employee will be paid **175%** of the ordinary hourly rate for any hours, ordinary and overtime, worked on a Saturday.

(iii) A casual employee will be paid **225%** of the ordinary hourly rate for any hours, ordinary and overtime, worked on a Sunday.

(e) A casual employee will be paid **275%** of the ordinary hourly rate for any hours, ordinary and overtime, worked on a public holiday prescribed in s.115 of the Fair Work Act.

(f) The casual loading is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment."

2. By deleting clause 23 and inserting the following:

23. Overtime and penalty rates

An employee will be paid the following penalty rates.

23.1 Shift Work Penalties

(a) For each hour worked on early morning shift or afternoon shift an employee will be paid **\$2.73**.

(b) For each hour worked on night shift, an employee will be paid **\$3.24**.

(c) For each hour worked on permanent night shift, an employee will be paid **\$6.15**.

23.2 Sunday work

A full-time or part-time employee will be paid **200%** of the ordinary hourly rate for any hours, ordinary and overtime, worked on a Sunday.

23.3 Public holidays

A full-time or part-time employee will be paid **250%** of the ordinary hourly rate for any hours, ordinary and overtime, worked on a public holiday.

23.4 Saturday work

A full-time or part-time employee will be paid **150%** of the ordinary hourly rate for any hours, ordinary and overtime, worked on a Saturday.

23.5 Definition of overtime

- (a) For a full-time employee, overtime is any time worked in excess of the employee's ordinary hours (see clause 20).
- (b) For a part-time employee, hours worked in excess of the employee's ordinary hours (agreed in accordance with 10.2(c) and 10.2(d)) will be paid at the appropriate overtime rate.
- (c) For a casual employee, overtime is any time worked in excess of the employee's ordinary hours (see clause 10.3(b)).

23.6 Exclusions from overtime

- (a) An employee within the Clerical, Administrative and Professional classifications engaged on an annual salary equivalent that is at or above Level 7 will not be entitled to overtime.
- (b) An employee working overtime will not receive a shift penalty in accordance with clause 23.1.

23.7 Overtime rates

Where a full-time or part-time employee works overtime the employer must pay to the employee the overtime rates as follows:

For overtime worked on	% of ordinary hourly rate
Monday to Friday: First 3 hours	150%
After 3 hours	200%
Saturday – all hours	150%
Sunday – all hours	200%
Public holiday – all hours	250%

23.8 Time off instead of payment for overtime

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 23.4.
- (c) An agreement must state each of the following:

- (i) the number of overtime hours to which it applies and when those hours were worked;
- (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
- (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
- (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G. An agreement under clause 23.4 can also be made by an exchange of emails between the employee and employer, or by other electronic means

- (d) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 23.4 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 23.4 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 23.4 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.

- (j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 23.4 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

Note: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act).

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 23.4 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 23.4

23.9 Call back

Where an employee is recalled to work overtime after leaving the employer's premises, the employee will be paid for a minimum of four hours.

B. This determination comes into operation from 1 January 2018. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period on or after 1 January 2018.

VICE PRESIDENT