



DECISION

Fair Work Act 2009

s.157 - FWC may vary etc. modern awards if necessary to achieve modern awards objective

COVID-19 Award Flexibility Schedules

(AM2020/93)

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT HATCHER
VICE PRESIDENT CATANZARITI
DEPUTY PRESIDENT ASBURY
DEPUTY PRESIDENT CLANCY
COMMISSIONER SPENCER

MELBOURNE, 24 SEPTEMBER 2020

Award flexibility schedules – Schedule X-Additional measures during the COVID-19 pandemic– award specific COVID-19 schedules–schedules due to cease operation.

[1] On 8 April 2020 we issued a Decision,¹ on our own initiative, varying 99 modern awards to insert a new schedule: Schedule X – Additional measures during the COVID-19 pandemic. Schedule X provides an entitlement to unpaid ‘pandemic leave’ and the flexibility to take twice as much annual leave at half pay. Schedule X was to operate until 30 June 2020.

[2] The operation of Schedule X has been extended in 81 awards since the April 2020 Decision.

[3] In addition, in August 2020, Schedule X was inserted into the *Building and Construction General On-site Award 2010*, the *Joinery and Building Trades Award 2010* and the *Mobile Crane Hiring Award 2010* by a separately constituted Full Bench.²

[4] On 16 September 2020 we issued a Statement³ in relation to Schedule X in which we expressed the *provisional* view that the operation of Schedule X in 71 modern awards should be extended until 29 March 2021. A supplementary Statement was issued on 18 September 2020⁴ extending the *provisional* view to a further 3 modern awards.

[5] The 16 September Statement confirmed that we did not intend to vary Schedule X in the 9 Health Sector Awards. We also noted that Schedule X in the *Live Performance Award 2010* expires on 30 June 2021 and so this award was not included in the list of awards to be varied. A total of 74 awards were the subject of the *provisional* view, these are set out at **Attachment A** to this decision.

¹ [\[2020\] FWCFB 1837](#)

² [\[2020\] FWCFB 4126](#)

³ [\[2020\] FWCFB 4986](#)

⁴ [\[2020\] FWCFB 5028](#)

[6] Interested parties were invited to file submissions in response to the *provisional* views by 4pm on Thursday 24 September 2020. Submissions were received from:

- [Association of Consulting Architects Australia](#) in relation to the *Architects Award 2020*
- [Eagers Automotive](#) in relation to the *Vehicle Repair, Services and Retail Award 2020*
- [National Retail Association](#) in relation to the *General Retail Industry Award 2010*
- [Newsagents Association of NSW & ACT Limited](#) in relation to the *General Retail Industry Award 2010*

[7] Each of these submissions supported the *provisional* view. There have been no submissions filed opposing our *provisional* view.

[8] In our Statement of 16 September 2020, we made it clear that in the event that no submissions were filed opposing our *provisional* view, then we would vary each of the relevant awards to extend the operation of Schedule X to 29 March 2020.

[9] As we mentioned in the 16 September Statement, the *Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Act 2020* received Royal Assent on 3 September 2020. The amendment extends the operation of the JobKeeper scheme, with some amendments, until 29 March 2021. On 4 September 2020, the Commission published a Fact Sheet about the amendment.

[10] The JobKeeper scheme is part of a range of measures introduced by both State and Federal Governments during the course of the COVID-19 pandemic. The Commission has published an Information Note-Government responses to the COVID-19 pandemic which has been updated regularly since it was first published on 25 March 2020. The most recent update to the [Information Note](#) was on 18 September 2020.

[11] The observations made in the 8 April 2020 decision in respect of the basis for the initial insertion of Schedule X into the relevant awards remain apposite. In particular, the COVID-19 pandemic is still in progress and without the continued operation of Schedule X there would be a ‘regulatory gap’ in the award safety net concerning employees who are required to self-isolate. Continuing access to unpaid pandemic leave will enable more people to remain in employment and will support the important public policy objective of encouraging those who should self-isolate to do so, thereby limiting the spread of COVID-19 in workplaces and allowing businesses to continue to operate.

[12] The observations made in the 8 April 2020 decision regarding the s.134 considerations and the necessity for the inclusion of Schedule X in these awards (in order to ensure that they achieve the modern awards objective) remain cogent.

[13] For the reasons set out above we are satisfied that the variation of each of these awards to extend the operation of Schedule X until 29 March 2021 is necessary to ensure that these awards achieve the modern awards objective.

[14] Variation determinations for each of the 74 awards at Attachment A will be issued with this decision.

PRESIDENT

Printed by authority of the Commonwealth Government Printer

<PR723051>

Attachment A

<i>1. Air Pilots Award 2020</i>	MA000046
<i>2. Airline Operations-Ground Staff Award 2020</i>	MA000048
<i>3. Airport Employees Award 2020</i>	MA000049
<i>4. Alpine Resorts Award 2020</i>	MA000092
<i>5. Aluminium Industry Award 2020</i>	MA000060
<i>6. Amusement, Events and Recreation Award 2020</i>	MA000080
<i>7. Animal Care and Veterinary Services Award 2020</i>	MA000118
<i>8. Aquaculture Industry Award 2020</i>	MA000114
<i>9. Architects Award 2020</i>	MA000079
<i>10. Asphalt Industry Award 2020</i>	MA000054
<i>11. Banking, Finance and Insurance Award 2020</i>	MA000019
<i>12. Broadcasting, Recorded Entertainment and Cinemas Award 2010</i>	MA000091
<i>13. Building and Construction General On-Site Award 2010</i>	MA000020
<i>14. Business Equipment Award 2020</i>	MA000021
<i>15. Car Parking Award 2020</i>	MA000095
<i>16. Cement, Lime and Quarrying Award 2020</i>	MA000055
<i>17. Cemetery Industry Award 2020</i>	MA000070
<i>18. Children's Services Award 2010</i>	MA000120
<i>19. Cleaning Services Award 2020</i>	MA000022
<i>20. Commercial Sales Award 2020</i>	MA000083
<i>21. Contract Call Centres Award 2020</i>	MA000023
<i>22. Corrections and Detention (Private Sector) Award 2020</i>	MA000110
<i>23. Cotton Ginning Award 2020</i>	MA000024
<i>24. Dry Cleaning and Laundry Industry Award 2020</i>	MA000096
<i>25. Educational Services (Post-Secondary Education) Award 2020</i>	MA000075
<i>26. Fast Food Industry Award 2010</i>	MA000003
<i>27. Fitness Industry Award 2010</i>	MA000094
<i>28. Food, Beverage and Tobacco Manufacturing Award 2010</i>	MA000073
<i>29. Funeral Industry Award 2010</i>	MA000105

30. <i>Gardening and Landscaping Services Award 2020</i>	MA000101
31. <i>General Retail Industry Award 2010</i>	MA000004
32. <i>Graphic Arts, Printing and Publishing Award 2010</i>	MA000026
33. <i>Hair and Beauty Industry Award 2010</i>	MA000005
24. <i>Higher Education Industry-General Staff-Award 2020</i>	MA000007
35. <i>Horse and Greyhound Training Award 2020</i>	MA000008
36. <i>Horticulture Award 2010</i>	MA000028
37. <i>Hospitality Industry (General) Award 2020</i>	MA000009
38. <i>Joinery and Building Trades Award 2010</i>	MA000029
39. <i>Journalists Published Media Award 2020</i>	MA000067
40. <i>Labour Market Assistance Industry Award 2020</i>	MA000099
41. <i>Legal Services Award 2020</i>	MA000116
42. <i>Local Government Industry Award 2020</i>	MA000112
43. <i>Manufacturing and Associated Industries and Occupations Award 2020</i>	MA000010
44. <i>Meat Industry Award 2020</i>	MA000059
45. <i>Miscellaneous Award 2020</i>	MA000104
46. <i>Mobile Crane Hiring Award 2010</i>	MA000032
47. <i>Nursery Award 2020</i>	MA000033
48. <i>Pastoral Award 2010</i>	MA000035
49. <i>Pest Control Industry Award 2020</i>	MA000097
50. <i>Pharmaceutical Industry Award 2010</i>	MA000069
51. <i>Poultry Processing Award 2020</i>	MA000074
52. <i>Premixed Concrete Award 2020</i>	MA000057
53. <i>Professional Diving Industry (Recreational) Award 2020</i>	MA000109
54. <i>Professional Employees Award 2020</i>	MA000065
55. <i>Racing Clubs Events Award 2010</i>	MA000013
56. <i>Racing Industry Ground Maintenance Award 2020</i>	MA000014
57. <i>Rail Industry Award 2020</i>	MA000015
58. <i>Registered and Licensed Clubs Award 2010</i>	MA000058
59. <i>Restaurant Industry Award 2020</i>	MA000119
60. <i>Salt Industry Award 2010</i>	MA000107
61. <i>Seafood Processing Award 2020</i>	MA000068

<i>62. Security Services Industry Award 2020</i>	MA000016
<i>63. Silviculture Award 2020</i>	MA000040
<i>64. State Government Agencies Award 2020</i>	MA000121
<i>65. Storage Services and Wholesale Award 2020</i>	MA000084
<i>66. Sugar Industry Award 2020</i>	MA000087
<i>67. Surveying Award 2020</i>	MA000066
<i>68. Textile, Clothing, Footwear and Associated Industries Award 2010</i>	MA000017
<i>69. Timber Industry Award 2010</i>	MA000071
<i>70. Vehicle Repair, Services and Retail Award 2020</i>	MA000089
<i>71. Waste Management Award 2020</i>	MA000043
<i>72. Water Industry Award 2020</i>	MA000113
<i>73. Wine Industry Award 2010</i>	MA000090
<i>74. Wool Storage, Sampling and Testing Award 2010</i>	MA000044