



DECISION

Fair Work Act 2009

s 160—Variation of modern award to remove ambiguity or uncertainty or correct error

Variation of *General Retail Industry Award 2020* on Commission’s own motion

(AM2023/19)

JUSTICE HATCHER, PRESIDENT

SYDNEY, 8 AUGUST 2023

Variation on the Commission’s own initiative pursuant to s 160 to correct clause 4.1(b) of the General Retail Industry Award 2020.

[1] This matter has been created on the Commission’s own initiative to correct an error in clause 4.1(b) of the *General Retail Industry Award 2020* (Retail Award) pursuant to s 160 of the *Fair Work Act 2009* (Act).

[2] Clause 4.1 concerns the coverage of the Retail Award and provides the following:

4.1 This industry award covers, to the exclusion of any other modern award:

- (a) employers in the general retail industry throughout Australia; and
- (b) employees (with a classification defined in defined in Schedule A—Classification Definitions) of employers mentioned in clause 4.1(a).

[3] Clause 4.1(b) refers to employees “with” instead of “within” a classification defined in Schedule A and unnecessarily repeats the words “defined in”. Clause 4.1(b) has appeared in its current form since the award was varied extensively as part of the 4 yearly review of modern awards on 10 September 2020.¹

[4] Section 160 of the Act allows the Commission to make a determination varying a modern award to remove ambiguity or uncertainty or correct an error. Section 160(2)(a) provides that the Commission may make such a determination on its own initiative. The principles applicable to the interpretation and application of s 160 are well established.² In order to establish that there is an error it is necessary to show that some sort of mistake occurred, in that a provision of the award was made in a form which did not reflect the tribunal’s intention.³

[5] It is my view that the issues in clause 4.1(b) identified above clearly constitute an error for the purpose of s 160 and should be corrected.

[6] A determination replacing the words “with a classification defined in defined in Schedule A” in clause 4.1(b) with the words “within a classification defined in Schedule A” will be issued concurrently with this decision.



PRESIDENT

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¹ [PR722492](#).

² *Property Sales Association of Queensland, Union of Employees re Real Estate Industry Award 2010* [\[2012\] FWA 10134](#) at [14].

³ *4 yearly review of modern awards - Vehicle Manufacturing, Repair Services and Retail Award 2010* [\[2016\] FWCFCB 4418](#) at [73].