



DECISION

Fair Work Act 2009

s.160—Application to vary a modern award to remove ambiguity or uncertainty or correct error

Review of industry-specific small business redundancy provisions in certain modern awards

(AM2025/20)

JUSTICE HATCHER, PRESIDENT

SYDNEY, 24 NOVEMBER 2025

Review of industry-specific small business redundancy provisions in certain modern awards – Commission’s own initiative – Joinery and Building Trades Award 2020 – Mannequins and Models Award 2020 – Manufacturing and Associated Industries and Occupations Award 2020 – Sugar Industry Award 2020 – Textile, Clothing, Footwear and Associated Industries Award 2020 – Timber Industry Award 2020 – decision.

[1] On 1 September 2025, I issued a Statement¹ commencing proceedings on the Commission’s own initiative under s 160 of the *Fair Work Act 2009* (Cth) (FW Act) to deal with an inconsistency or ambiguity in award-specific redundancy provisions in six identified modern awards:

- *Joinery and Building Trades Award 2020*²
- *Mannequins and Models Award 2020*³
- *Manufacturing and Associated Industries and Occupations Award 2020*⁴
- *Sugar Industry Award 2020*⁵
- *Textile, Clothing, Footwear and Associated Industries Award 2020*⁶
- *Timber Industry Award 2020*⁷

[2] The inconsistency or ambiguity arises due to s 121(4) of the FW Act, which was introduced by the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (CL Act) and came into effect on 15 December 2023.

[3] Paragraph [7] of the Statement set out my *provisional view* that the relevant clause relating to award-specific small business redundancy provisions in each of the identified modern awards, except for the *Sugar Industry Award 2020*, should be varied to clarify that employees are entitled to redundancy pay in the circumstances provided for by s 121(4) of the National Employment Standards (NES).

[4] Draft determinations for each of those awards giving effect to my *provisional view* were published with the Statement and interested parties were invited to file submissions in relation to the *provisional view* and the draft determinations.

[5] The Construction, Forestry and Maritime Employees Union filed a submission in agreement with the *provisional* view and the draft determinations published for the *Joinery and Building Trades Award 2020* and the *Manufacturing and Associated Industries and Occupations Award 2020*. No other submissions were filed.

[6] In paragraph [10] of the Statement, I indicated that in the absence of any responsive views, the variations will be made in the same terms as proposed in the draft determinations. As no responsive views were filed opposing the variations, I confirm my *provisional* view to vary the identified awards, except the *Sugar Industry Award 2020*.

[7] Paragraph [8] of the Statement set out my *provisional* view that while the *Sugar Industry Award 2020*⁸ does not contain an additional entitlement for employees of small businesses, an ambiguity or uncertainty may arise in clause 42.4 of the award as it applies ‘to an employee engaged at a bulk terminal, unless the employee is excluded from redundancy pay under the NES by sections 121(1), 123(1), 123(4)(a) and 123(4)(d) of the Act.’ My *provisional* view was that this clause should be varied to clarify that employees are entitled to redundancy pay in the circumstances set out in s 121(4).

[8] No submissions were filed in respect of the *provisional* view and draft determination for the *Sugar Industry Award 2020*. I therefore confirm my *provisional* view, and the variation in the draft determination will be made to remedy the identified ambiguity or uncertainty.

[9] It is also necessary to adjust ‘NOTE 3’ which appears under the heading of clause 42, Redundancy in the *Sugar Industry Award 2020*. The Note states:

NOTE 3: Clause 42.5 supplements the [NES](#) by providing entitlements to certain employees in sugar mills excluded from redundancy pay under the [NES](#) by section 123(1)(a) of the [Act](#) because they are employed for a specified period of time or for a specified task. The other exclusions in sections 121(1), 123(1) and 123(4)(d) continue to apply.

[10] Note 3 will, consistent with the variation to clause 42.4 and to further avoid ambiguity and uncertainty, be varied to add the following underlined words:

NOTE 3: Clause 42.5 supplements the [NES](#) by providing entitlements to certain employees in sugar mills excluded from redundancy pay under the [NES](#) by section 123(1)(a) of the [Act](#) because they are employed for a specified period of time or for a specified task. The other exclusions in sections 121(1), 123(1) and 123(4)(d) continue to apply, unless the employee is entitled to redundancy pay under the NES by section 121(4) of the Act.

[11] Determinations varying the *Joinery and Building Trades Award 2020*, *Mannequins and Models Award 2020*, *Manufacturing and Associated Industries and Occupations Award 2020*, *Sugar Industry Award 2020*, *Textile, Clothing, Footwear and Associated Industries Award 2020* and *Timber Industry Award 2020* pursuant to s 160 of the FW Act are issued with this decision. The determinations operate from 1 December 2025.



PRESIDENT

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¹ [Statement \[2025\] FWC 2569.](#)

² MA000029.

³ MA000117.

⁴ MA000010.

⁵ MA000087.

⁶ MA000017.

⁷ MA000017.

⁸ *Sugar Industry Award 2020* cl 42.4.