



DECISION

Fair Work Act 2009

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

Applications to vary Schedule X

(AM2020/34 and others)

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER BISSETT

MELBOURNE, 1 JULY 2020

Section 157(3) of the Fair Work Act 2009 (Cth) – additional measures during COVID-19 pandemic – Schedule X-Additional measures during the COVID-19 pandemic.

[1] On 8 April 2020 a Full Bench issued a decision,¹ on its 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. A list of the 99 awards is at **Attachment A**. Schedule X was to operate until 30 June 2020, unless extended.

[2] A Statement² issued on 23 June 2020 indicated that the Commission did not propose to vary Schedule X to extend its operation past 30 June 2020 on its own motion. Parties wishing to extend the operation of the schedule were invited to make an application by Friday 26 June 2020.

[3] Applications were filed by 26 June 2020 to extend the operation of Schedule X, from 30 June to 31 July 2020, in the following awards (collectively, the Retail Awards):

- *Fast Food Industry Award 2010* (AM2020/43)
- *General Retail Industry Award 2010* (AM2020/44)
- *Hair and Beauty Industry Award 2010* (AM2020/41) and
- *Storage Services and Wholesale Award 2020* (AM2020/42).

[4] Applications were also filed by 26 June 2020 to extend the operation of Schedule X until further order of the Commission or other order in AM2020/13, in the following awards (collectively, the Health Sector Awards):

- *Aboriginal Community Controlled Health Services Award 2020* (AM2020/34)
- *Aged Care Award 2010* (AM2020/38)

¹ [2020] FWCFB 1837

² [2020] FWCFB 3281

- *Ambulance & Patient Transport Industry Award 2020* (AM2020/45, AM2020/47 and AM2020/62)
- *Health Professionals and Support Services Award 2020* (AM2020/40 and AM2020/66)
- *Medical Practitioners Award 2020* (AM2020/49)
- *Nurses Award 2010* (AM2020/46)
- *Pharmacy Industry Award 2020* (AM2020/50)
- *Social, Community, Home Care and Disability Services Industry Award 2010* (AM2020/52); and
- *Supported Employment Services Award 2020* (AM2020/39).

[5] Two applications were lodged seeking a longer period of extension:

- *Live Performance Award 2010* (AM2020/48 and AM2020/79); and
- *Air Pilots Award 2020* (AM2020/51).

[6] A statement³ issued on 26 June 2020 made it clear that each of these applications were to be heard at 12 noon on Tuesday 30 June 2020. Parties wishing to attend the hearing were to provide the name, direct number and organisation by 12 noon Monday, 29 June 2020 to chambers.ross.j@fwc.gov.au. A [Notice of Listing](#) was published on 26 June 2020. A further Statement⁴ published on 28 June 2020 summarised the nature of the applications and reiterated that they had been listed for hearing on 30 June 2020 at 12 noon.

[7] These applications were the subject of a hearing on 30 June 2020. For the reasons given in transcript we extended the operation of Schedule X in the Retail Awards and the Health Sector Awards as set out in [3] and [4] above. In the *Live Performance Award 2010* the operation of Schedule X was extended to 30 June 2021, having regard to the agreement between the parties and the impact of the COVID-19 pandemic on the sector covered by this award. Schedule X in the *Air Pilots Award 2020* was extended to 31 December 2020 having regard to the impact of the COVID-19 pandemic on the Aviation sector.

[8] In respect of each of the variations made the matters canvassed as providing a basis for the *initial* insertion of Schedule X into these awards remain apposite. In particular, the COVID-19 pandemic is still in progress and there remains 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. 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.

[9] On 29 and 30 June 2020, a number of further applications were filed, to extend the operation of Schedule X in respect of the following awards:

- *Airline Operations – Ground Staff Award 2020* (AM2020/57)

³ [2020] FWCFB 3378

⁴ [2020] FWC 3384

- *Airport Employees Award 2020* (AM2020/53)
- *Alpine Resorts Award 2020* (AM2020/80)
- *Aluminium Industry Award 2020* (AM2020/80)
- *Amusement, Events and Recreation Award 2020* (AM2020/80)
- *Animal Care and Veterinary Services Award 2020* (AM2020/55 and AM2020/61)
- *Aquaculture Industry Award 2020* (AM2020/80)
- *Architects Award 2020* (AM2020/54)
- *Asphalt Industry Award 2020* (AM2020/80)
- *Banking, Finance and Insurance Industry Award 2020* (AM2020/84);
- *Broadcasting, Recorded Entertainment and Cinemas Award 2010* (AM2020/79)
- *Business Equipment Award 2020* (AM2020/57)
- *Car Parking Award 2020* (AM2020/63)
- *Cement, Lime and Quarrying Award 2020* (AM2020/80)
- *Cemetery Industry Award 2020* (AM2020/80)
- *Children's Services Award 2010* (AM2020/65)
- *Cleaning Services Award 2020* (AM2020/67)
- *Commercial Sales Award 2020* (AM2020/68)
- *Contract Call Centres Award 2020* (AM2020/57)
- *Corrections and Detentions (Private Sector) Award 2020* (AM2020/69 and AM2020/80)
- *Cotton Ginning Award 2020* (AM2020/80)
- *Dry Cleaning and Laundry Industry Award 2020* (AM2020/81)
- *Educational Services (Post-Secondary Education) Award 2020* (AM2020/82)
- *Electrical Power Industry Award* (AM2020/58)
- *Fitness Industry Award 2010* (AM2020/80)
- *Food, Beverage and Tobacco Manufacturing 2010* (AM2020/70)
- *Funeral Industry Award 2010* (AM2020/71)
- *Gardening and Landscaping Services Award 2020* (AM2020/80)
- *Higher Education Industry-General Staff-Award 2020* (AM2020/57)
- *Horse and Greyhound Training Award 2020* (AM2020/80)
- *Horticulture Award 2010* (AM2020/80)
- *Hospitality Industry (General) Award 2020* (AM2020/72)
- *Journalists Published Media Award 2010* (AM2020/79)
- *Labour Market Assistance Industry Award 2020* (AM2020/57)
- *Legal Services Award 2020* (AM2020/57)
- *Local Government Industry Award 2020* (AM2020/56 and AM2020/57)
- *Meat Industry Award 2020* (AM2020/80)
- *Miscellaneous Award 2020* (AM2020/73)
- *Nursery Award 2020* (AM2020/80)
- *Pastoral Award 2010* (AM2020/80)
- *Pest Control Industry Award 2020* (AM2020/80)
- *Pharmaceutical Industry Award 2010* (AM2020/80)
- *Poultry Processing Award 2010* (AM2020/80)
- *Premixed Concrete Award 2020* (AM2020/80)
- *Professional Diving Industry (Recreational) Award 2020* (AM2020/80)
- *Professional Employees Award 2020* (AM2020/59)
- *Racing Clubs Events Award 2010* (AM2020/80)
- *Racing Industry Ground Maintenance Award 2020* (AM2020/80)
- *Rail Industry Award 2020* (AM2020/57)
- *Registered and Licensed Clubs Award 2010* (AM2020/75)

- *Restaurant Industry Award 2020* (AM2020/74)
- *Salt Industry Award 2010* (AM2020/80)
- *Seafood Processing Award 2020* (AM2020/80)
- *Security Services Industry Award 2020* (AM2020/76)
- *Silviculture Award 2020* (AM2020/80)
- *State Government Agencies Award 2020* (AM2020/60)
- *Sugar Industry Award 2020* (AM2020/80)
- *Textile, Clothing, Footwear and Associated Industries Award 2010* (AM2020/81)
- *Timber Industry Award 2010* (AM2020/81)
- *Vehicle Repair, Retail and Services Award 2020* (AM2020/83)
- *Waste Management Award 2020* (AM2020/80)
- *Water Industry Award 2020* (AM2020/77, AM2020/64 and AM2020/57)
- *Wine Industry Award 2010* (AM2020/78) and
- *Wool Storage, Sampling and Testing Award 2010* (AM2020/80).

[10] Each of the above awards currently contains Schedule X (save for the *Electrical Power Industry Award 2020*). The applications seek to extend the operation of Schedule X in these awards either until 30 September 2020 or until further order of the Commission. In respect of the *Electrical Power Industry Award 2020*, the Association of Professional Engineers, Scientists and Managers Australia seeks to have Schedule X inserted into this award and for it to operate until 30 September 2020.

[11] It is our *provisional* view that the operative date of Schedule X of each of the awards at [9] above (save for the *Electrical Power Industry Award 2010*) should be extended to 30 September 2020. It is also our *provisional* view that Schedule X should be inserted in the *Electrical Power Industry Award 2010* and that it should operate until 30 September 2020.

[12] Submissions opposing any of these applications and our *provisional* views must be filed by **2pm Thursday, 2 July 2020**. Submissions should be sent to amod@fwc.gov.au in word version and include the relevant matter number in the subject line.

[13] If no submissions are filed opposing an application and our *provisional* view in respect of it, we will grant the application and vary the relevant award accordingly.

[14] If any submissions are filed opposing the applications and our *provisional* views then a hearing will take place at **10am on Friday, 3 July 2020, by telephone**. Parties wishing to appear at the hearing are to provide the name, direct number and organisation by **4pm Thursday, 2 July 2020** to chambers.ross.j@fwc.gov.au.

[15] In the event that no submissions are filed opposing an application and our *provisional* view in respect of it then the hearing proposed for **10am on Friday, 3 July 2020** will not be necessary and will be vacated.

PRESIDENT

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<PR720643>

Appearances:

Ms M Anthony for The Association of Professional Engineers, Scientists and Managers, Australia

Mr I Booth for the Newsagents Association of New South Wales and the Australian Capital Territory Ltd and the Australian Newsagents Federation Ltd

Mr S Bull for the United Workers' Union

Mr M Chesher for the Media, Entertainment and Arts Alliance

Mr T Clarke for the Australian Council of Trade Unions

Ms M De Vecchis for the Australian Salaried Medical Officers Federation

Mr Z Duncalfe for The Australian Workers' Union

Mr D Hamilton for Live Performance Australia

Ms J Knight and Mr M Robson for the Australian Municipal, Administrative, Clerical and Services Union

Mr A Millman for the National Retail Association

Ms A Moussa for the Victorian Ambulance Union

Mr G Mules for Flight Training Adelaide

Mr A Pardo and Mr M Galbraith for the Shop, Distributive and Allied Employees Association

Ms V Wiles for the Construction, Forestry, Maritime, Mining and Energy Union – Manufacturing Division

Ms K Wischer for the Australian Nursing and Midwifery Federation

Hearing details:

Melbourne (by telephone)

2020

30 June.

ATTACHMENT A: Modern Awards varied to insert Schedule X

- *Aboriginal Community Controlled Health Services Award 2010*
- *Aged Care Award 2010*
- *Air Pilots Award 2010*
- *Aircraft Cabin Crew Award 2010*
- *Airline Operations-Ground Staff Award 2010*
- *Airport Employees Award 2010*
- *Alpine Resorts Award 2010*
- *Aluminium Industry Award 2020*
- *Ambulance and Patient Transport Industry Award 2020*
- *Amusement, Events and Recreation Award 2010*
- *Animal Care and Veterinary Services Award 2020*
- *Aquaculture Industry Award 2020*
- *Architects Award 2010*
- *Asphalt Industry Award 2010*
- *Banking, Finance and Insurance Award 2020*
- *Book Industry Award 2020*
- *Broadcasting, Recorded Entertainment and Cinemas Award 2010*
- *Business Equipment Award 2010*
- *Car Parking Award 2020*
- *Cement, Lime and Quarrying Award 2010*
- *Cemetery Industry Award 2020*
- *Children's Services Award 2010*
- *Cleaning Services Award 2010*
- *Clerks - Private Sector Award 2010*
- *Commercial Sales Award 2010*
- *Concrete Products Award 2010*
- *Contract Call Centres Award 2010*
- *Corrections and Detention (Private Sector) Award 2020*
- *Cotton Ginning Award 2020*
- *Dry Cleaning and Laundry Industry Award 2010*
- *Educational Services (Post-Secondary Education) Award 2010*
- *Educational Services (Schools) General Staff Award 2010*
- *Educational Services (Teachers) Award 2010*
- *Fast Food Industry Award 2010*
- *Fitness Industry Award 2010*
- *Food, Beverage and Tobacco Manufacturing Award 2010*
- *Funeral Industry Award 2010*
- *Gardening and Landscaping Services Award 2020*
- *General Retail Industry Award 2010*
- *Graphic Arts, Printing and Publishing Award 2010*
- *Hair and Beauty Industry Award 2010*
- *Health Professionals and Support Services Award 2010*
- *Higher Education Industry-Academic Staff-Award 2010*
- *Higher Education Industry-General Staff-Award 2010*
- *Horse and Greyhound Training Award 2010*
- *Horticulture Award 2010*
- *Hospitality Industry (General) Award 2010*
- *Journalists Published Media Award 2010*
- *Labour Market Assistance Industry Award 2010*

- *Legal Services Award 2020*
- *Live Performance Award 2010*
- *Local Government Industry Award 2010*
- *Mannequins and Models Award 2010*
- *Manufacturing and Associated Industries and Occupations Award 2010*
- *Marine Tourism and Charter Vessels Award 2010*
- *Market and Social Research Award 2020*
- *Meat Industry Award 2010*
- *Medical Practitioners Award 2020*
- *Miscellaneous Award 2010*
- *Nursery Award 2020*
- *Nurses Award 2010*
- *Passenger Vehicle Transportation Award 2010*
- *Pastoral Award 2010*
- *Pest Control Industry Award 2010*
- *Pharmaceutical Industry Award 2010*
- *Pharmacy Industry Award 2010*
- *Poultry Processing Award 2010*
- *Premixed Concrete Award 2020*
- *Professional Diving Industry (Recreational) Award 2010*
- *Professional Employees Award 2010*
- *Racing Clubs Events Award 2010*
- *Racing Industry Ground Maintenance Award 2020*
- *Rail Industry Award 2010*
- *Real Estate Industry Award 2020*
- *Registered and Licensed Clubs Award 2010*
- *Restaurant Industry Award 2010*
- *Road Transport (Long Distance Operations) Award 2010*
- *Road Transport and Distribution Award 2010*
- *Salt Industry Award 2010*
- *Seafood Processing Award 2020*
- *Security Services Industry Award 2010*
- *Silviculture Award 2020*
- *Social, Community, Home Care and Disability Services Industry Award 2010*
- *Sporting Organisations Award 2020*
- *State Government Agencies Award 2020*
- *Storage Services and Wholesale Award 2010*
- *Sugar Industry Award 2010*
- *Supported Employment Services Award 2010*
- *Surveying Award 2020*
- *Telecommunications Services Award 2010*
- *Textile, Clothing, Footwear and Associated Industries Award 2010*
- *Timber Industry Award 2010*
- *Transport (Cash in Transit) Award 2010*
- *Travelling Shows Award 2020*
- *Vehicle Manufacturing, Repair, Services and Retail Award 2010*
- *Waste Management Award 2010*
- *Water Industry Award 2020*
- *Wine Industry Award 2010*
- *Wool Storage, Sampling and Testing Award 2010*