



DECISION

Fair Work Act 2009

s.160—Variation of modern award

Variation on the Commission’s Own Motion – Hospitality Industry (General) Award 2020 and Restaurant Industry Award 2020 (AM2022/13)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 1 JUNE 2022

Section 160 Fair Work Act 2009 – variation on the Commission’s own motion – changes to the Superannuation Guarantee (Administration) Act 1992 – ambiguity or uncertainty – determinations issued.

[1] On 2 May 2022, I issued a Statement¹ (the May Statement) which outlined upcoming changes to the *Superannuation Guarantee (Administration) Act 1992* (the Superannuation Act).

[2] The May Statement set out that:

- On 22 February 2022, the *Treasury Laws Amendment (Enhancing Superannuation Outcomes for Australians and Helping Australian Businesses Invest) Act 2022* (the Amending Act) received royal assent;
- The Amending Act removes the monthly minimum threshold for salary or wages to count towards the superannuation guarantee (repealing s27(2) of the Superannuation Act)²;
- The amendment applies in relation to a calendar month that is in a quarter beginning on or after 1 July 2022.³

[3] The *Hospitality Industry (General) Award 2020* (the Hospitality Award) and the *Restaurant Industry Award 2020* (the Restaurant Award) both provide a lower threshold for salary or wages to be taken into account for the purposes of the superannuation guarantee than the \$450 currently provided for in s27(2) of the Superannuation Act (which will shortly be repealed). These are the only two modern awards with such a provision.

¹ [2022] FWC 992

² Schedule 1, item 1, *Treasury Laws Amendment (Enhancing Superannuation Outcomes for Australians and Helping Australian Businesses Invest) Act 2022*

³ Schedule 1, item 2, *Treasury Laws Amendment (Enhancing Superannuation Outcomes for Australians and Helping Australian Businesses Invest) Act 2022*

[4] Section 160 of the *Fair Work Act 2009* (Cth) (the Act) allows the Commission to make a determination varying a modern award to remove an ambiguity or uncertainty or to correct an error.

[5] The May Statement set out my *provisional view* that clause 27.2(b) of the Hospitality Award and clause 22.2(b) of the Restaurant Award:

- from 1 July 2022, will create uncertainty as to when superannuation contributions are to be made, and that this constitutes an ‘uncertainty’ for the purposes of s.160 of the Act; and
- should be deleted from the awards operative 1 July 2022 on the initiative of the Commission.

[6] Submissions opposing my *provisional view* were invited to be filed by 16 May 2022. No submissions were received.

[7] Pursuant to s.160 of the Act, I confirm my *provisional view* and the awards will be varied as set out in the May Statement.

[8] The determinations will be issued separately, with an operative date of 1 July 2022.

PRESIDENT

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