



# DECISION

*Fair Work Act 2009*  
ss 157, 160—Variation of modern award

## **COVID-19 Award Flexibility —Schedule X and award-specific schedules** (AM2022/17)

VICE PRESIDENT HATCHER

SYDNEY, 17 JUNE 2022

*Award flexibility schedules – Schedule X—Additional measures during the COVID-19 pandemic –award-specific COVID-19 schedules – schedules due to cease operation – deletion of schedules which are no longer operative.*

### **Currently operative Schedule X—Additional measures during the COVID-19 pandemic**

[1] On 8 April 2020, the Commission issued a decision<sup>1</sup> varying 99 awards to insert a new Schedule X—Additional measures during the COVID-19 pandemic. The proposed provisions of Schedule X provided an entitlement to unpaid “pandemic leave” and the flexibility to take twice as much annual leave at half pay. The Schedules were to operate from 8 April 2020 to 30 June 2020.

[2] Throughout 2020 and 2021, parties sought to extend the operation of Schedule X and some award-specific provisions. The most recent extensions sought were approved by the Commission and extended the operation of parts of Schedule X for some awards until 30 June 2022.

[3] Parties who seek to extend the operation of Schedule X in specified awards past 30 June 2022 must file an application to vary such awards to provide for this. No such applications have been received to date. The Commission does not intend to act on its own initiative to extend the operation of Schedule X in any award. If any applications are received, I will deal with them as a single Member of the Commission acting pursuant to a direction of the President made under s 616(3D)(b) of the *Fair Work Act 2009* (FW Act).

### **Expired Schedule X—Additional measures during the COVID-19 pandemic**

[4] A number of modern awards contain Schedule X—Additional measures during the COVID-19 pandemic, which have not been extended by application, and are therefore no longer operative. These awards are:

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<sup>1</sup> [\[2020\] FWCFB 1837](#)

- *Air Pilots Award 2020* (expired 29 March 2021)
- *Book Industry Award 2020* (expired 30 June 2020)
- *Clerks—Private Sector Award 2020* (expired 30 June 2020)
- *Commercial Sales Award 2020* (expired 29 March 2021)
- *Concrete Products Award 2020* (expired 30 June 2020)
- *Educational Services (Schools) General Staff Award 2020* (expired 30 June 2020)
- *Higher Education Industry—Academic Staff—Award 2020* (expired 30 June 2020)
- *Journalists Published Media Award 2020* (expired 29 March 2021)
- *Mannequins and Models Award 2020* (expired 30 June 2020)
- *Marine Tourism and Charter Vessels Award 2020* (expired 30 June 2020)
- *Market and Social Research Award 2020* (expired 30 June 2020)
- *Miscellaneous Award 2020* (expired 29 March 2021)
- *Passenger Vehicle Transportation Award 2020* (expired 30 June 2020)
- *Rail Industry Award 2020* (expired 29 March 2021)
- *Real Estate Industry Award 2020* (expired 30 June 2020)
- *Road Transport and Distribution Award 2020* (expired 30 June 2020)
- *Road Transport (Long Distance Operations) Award 2020* (expired 30 June 2020)
- *Sporting Organisations Award 2020* (expired 30 June 2020)
- *Surveying Award 2020* (expired 29 March 2021)
- *Transport (Cash in Transit) Award 2020* (expired 30 June 2020)
- *Travelling Shows Award 2020* (expired 30 June 2020)
- *Vehicle Repair, Services and Retail Award 2020*(expired 29 March 2021)

### **Other award-specific schedules**

[5] In addition to inserting Schedule X, the Commission considered a number of award-specific provisions which provided additional measures in response to the COVID-19 pandemic. In a number of matters, the Commission facilitated industry discussions regarding those measures.

[6] A number of these award-specific schedules inserted into modern awards have not been extended by application and are no longer operative. These award-specific schedules are:

- *Educational Services (Schools) General Staff Award 2020* – Schedule J (expired 1 August 2020)
- *Fast Food Industry Award 2010* – Schedule H—Award flexibility during the COVID-19 pandemic (expired 31 July 2020)
- *Hospitality Industry (General) Award 2020* – Schedule J—Award Flexibility During the COVID-19 Pandemic (expired 27 September 2020)
- *Real Estate Industry Award 2020* – Schedule I—Award Flexibility During the COVID-19 Pandemic<sup>2</sup>
- *Restaurant Industry Award 2020* – Schedule I—Award Flexibility During the COVID-19 Pandemic (expired 27 September 2020)
- *Vehicle, Repair, Services and Retail Award 2020* – Schedule I—Award Flexibility during the COVID-19 Pandemic (expired 31 January 2021)

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<sup>2</sup> Schedule I of the *Real Estate Industry Award 2020* contains no provision expressly providing for its expiry, but the Schedule had no practical operative effect on and from 1 October 2020.

### **Deleting expired schedules from modern awards**

[7] I consider that maintaining the text of provisions in modern awards which are no longer operative does not achieve the modern awards objective and creates uncertainty about current rights and obligations. I intend to deal with this matter under s 157(1)(a) and (3), and s 160(1) and (2)(a), of the FW Act as a single Member of the Commission acting pursuant to a direction of the President made under s 616(3D) of the FW Act.

[8] I consider that it is necessary, in order to meet the modern awards objective and to rectify the uncertainty identified in the preceding paragraph, to delete the expired schedules in the awards referred to in paragraphs [4] and [6] above. Determinations varying these awards will be issued shortly.

[9] I also consider that it is necessary, in order to meet the modern awards objective and to rectify the identified uncertainty, to delete the currently-operative Schedule X provisions in awards once they expire on 30 June 2022 if no application is made beforehand for their extension. Determinations varying these awards will be issued after 30 June 2022.



VICE PRESIDENT

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