



# STATEMENT

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards—Annualised salaries**

(AM2014/239 and AM2016/13)

Agricultural industry

JUSTICE ROSS, PRESIDENT

MELBOURNE, 31 MAY 2016

*4 yearly review of modern awards - award stage - annualised salary - Pastoral Award 2010 - common issue.*

### **Introduction**

[1] On 24 December 2015, a Full Bench issued a decision<sup>1</sup> (the *December 2015 decision*) dealing with a number of proposed variations to the *Pastoral Award 2010* (Pastoral Award), as part of the Award stage of the 4 yearly review of modern awards (the Review). One of the matters dealt with in the *December 2015 decision* was a variation sought by the National Farmers' Federation (NFF)<sup>2</sup> to insert an annualised salary term into the Pastoral Award.

[2] This Statement deals with a broader review of annualised salary terms in modern awards.

### **Background**

[3] Section 139 (1)(f) provides that a modern award may include annualised salary terms that:

- (i) have regard to the patterns of work in an occupation, industry or enterprise;
- (ii) provide an alternative to the separate payment of wages and other monetary entitlements; and
- (iii) include appropriate safeguards to ensure that individual employees are not disadvantaged;

[4] In the *December 2015 decision*,<sup>3</sup> the Full Bench indicated that it was satisfied that the term proposed by the NFF for insertion into the Pastoral Award met the requirements of

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<sup>1</sup> [\[2015\] FWCFB 8810](#).

<sup>2</sup> NFF [submission](#), 13 March 2015 at paragraph 4.

<sup>3</sup> [\[2015\] FWCFB 8810](#).at [170]

sections (i) and (ii), but that there was a need to give further consideration to the requirements of section 139(1)(f)(iii) of the Act.

[5] As part of the Review the NFF has also indicated that it intends to apply to vary the *Horticulture Award 2010* to insert an annualised salary clause.<sup>4</sup> In addition, the South Australian Wine Industry Association Incorporated has advised that it will seek the inclusion of an annualised salary clause in the *Wine Industry Award 2010*<sup>5</sup>.

[6] Applications have also been made to vary existing annualised salary clauses in four other modern awards, :

- *Clerks—Private Sector Award 2010*;
- *Contract Call Centres Award 2010*;
- *Hospitality Industry (General) Award 2010*; and
- *Restaurant Industry Award 2010*.

[7] The issues raised in these applications include:

- (i) the inclusion of a provision to allow for the reconciliation of an annualised salary arrangement for managers<sup>6</sup>;
- (ii) inclusion of a mechanism to ensure employees are not disadvantaged if the annualised salary arrangement ends (but employment continues) before the completion of a year<sup>7</sup>;
- (iii) a proposed variation to expressly include absorption of the annual leave loading in the calculation of annualised salaries<sup>8</sup>;
- (iv) a requirement that the annualised wage arrangement pass “better off overall test” in comparison with an employee with an equivalent work pattern covered by the general provisions of the award<sup>9</sup>;
- (v) an additional safeguard to ensure the employees to whom an annualised salary arrangement applies are not required to work unreasonable hours in excess of the employee’s agreed ordinary hours of work<sup>10</sup>;
- (vi) a right to access and copy employer records of start and finish times of work<sup>11</sup>;
- (vii) additional requirements relating to the making of an agreement including that the agreement between the employer and employee be in writing, be signed by both parties and a copy provided to the employee<sup>12</sup>;
- (viii) the inclusion of a provision allowing both the employer and employee to terminate the arrangement on notice or by agreement<sup>13</sup>

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<sup>4</sup> NFF submission, 13 March 2015 at paragraphs 4 and 5.

<sup>5</sup> South Australian Wine Industry Association Incorporated submission, 2 March 2015.

<sup>6</sup> United Voice submission 12 November 2015

<sup>7</sup> United Voice submission 12 November 2015

<sup>8</sup> Restaurant and Catering Industrial submission 2 March 2015

<sup>9</sup> United Voice submission 2 March 2015

<sup>10</sup> United Voice submission 2 March 2015

<sup>11</sup> United Voice submission 2 March 2015

<sup>12</sup> Australian Services Union submission 2 March 2015

(ix) that the arrangement be subject to an annual review<sup>14</sup>.

[8] Of the 122 modern awards, 19 contain an annualised salary term and the safeguards in those terms vary. A list of the 19 awards with annualised salary terms is set out at Attachment B. As indicated in the *December 2015 decision*, in those awards that contain an annualised salary term, it was usually the case that similar provisions formed part of the relevant pre-reform instruments and, as a consequence, the form and content of such terms was not the subject of much debate during the award modernisation process.

[9] During the Transitional Review in 2012 the ASU made applications to delete annualised salary clauses in two modern awards. Those applications were dismissed on the basis that no cogent reasons had been advanced for the changes sought and that a thorough re-examination of issues covered within the award modernisation process did not fall within the scope of the Transitional Review.

[10] However, the 4 yearly modern awards review is broader in scope than the Transitional Review and provides an opportunity to comprehensively review such terms.<sup>15</sup>

### Conclusion and next steps

[11] In light of the above, I am satisfied that a broader review of all annualised salary terms is required.

[12] I note that in the *December 2015 decision* the Full Bench proposed to give further consideration to this issue in relation to the Pastoral Award and stated at [170] :

“We will issue a Statement in due course setting out some provisional views as to the content of an appropriate annualised wage arrangement term for insertion into the *Pastoral Award 2010*. Interested parties will be given an opportunity to comment and the matter will be the subject of a further hearing.”

[13] However, in order to ensure consistent decision making and that all relevant issues in relation to annualised salary arrangements are canvassed, I have determined that the NFF’s application to vary the Pastoral Award and the applications set out above (at [5]–[6], see **Attachment A**) and existing annualised salary terms in modern awards (**Attachment B**) will be referred to a separately constituted Full Bench (see **Attachment C**) for review and determination.

[14] It should not be assumed that the referral of these matters to a Full Bench will result in a standard annualised salary term to be included in all awards. The content of particular clauses will be a matter for the Full Bench.

[15] The Full Bench will issue directions in due course.

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<sup>13</sup> Australian Services Union submission 2 March 2015

<sup>14</sup> Australian Services Union submission 2 March 2015

<sup>15</sup> [2015] FWCFB 8810 at [156].

PRESIDENT

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**ATTACHMENT A — Submissions received by the Commission in relation to annualised salary clauses**

<b>Award</b>	<b>Party seeking variation</b>	<b>Claim</b>	<b>link to submission</b>
Pastoral Award 2010	National Farmers' Federation	Seek to insert an annualised salary provision	<a href="#">Sub-02/03/15</a>
Clerks—Private Sector Award 2010	Australian Services Union	Propose deleting current clause 17 and inserting a new clause.	<a href="#">Sub-02/03/15</a>
Contract Call Centres Award 2010	Australian Services Union	Seeks to vary clause 18.5 to include NES entitlement for annualised salaries.	<a href="#">Sub-12/11/2015</a> and <a href="#">Sub-02/03/15</a>
Horticulture Award 2010	National Farmers' Federation	Seek to insert an annualised salary provision	<a href="#">Sub-13/03/15</a>
Wine Industry Award 2010	South Australian Wine Industry Association	Seek to insert an annualised salary provision	<a href="#">Sub - 2/3/2015</a>
Hospitality Industry (General) Award 2010	United Voice	Seeks to vary clause 27.1	<a href="#">Sub-12/11/15</a> and <a href="#">Sub-02/03/15</a>
Restaurant Industry Award 2010	United Voice	Seeks to vary clause 28	<a href="#">Sub-12/11/15</a>
Registered and Licenced Clubs Award 2010	United Voice	Seeks to vary Clause 17.3	<a href="#">Sub-12/11/15</a>
Restaurant Industry Award 2010	Restaurant and Catering Industrial	Seek an alteration to clause 28.1(a) to expressly state annualised salaries include absorption of the annual leave loading prescribed in clause 35.2(b).	<a href="#">Sub-02/03/15</a>

**ATTACHMENT B — Existing annualised salary clauses in modern awards**

<b>Number</b>	<b>Award</b>	<b>Clause</b>
1.	<i>Banking, Finance and Insurance Award 2010</i>	14
2.	<i>Broadcasting and Recorded Entertainment Award 2010</i>	44
3.	<i>Clerks-Private Sector Award 2010</i>	17
4.	<i>Contract Call Centres Award 2010</i>	18
5.	<i>Hospitality Industry (General) Award 2010</i>	27
6.	<i>Hydrocarbons Industry (Upstream) Award 2010</i>	20
7.	<i>Legal Services Award 2010</i>	30
8.	<i>Local Government Industry Award 2010</i>	14
9.	<i>Manufacturing and Associated Industries and Occupations Award 2010</i>	24
10.	<i>Marine Towing Award 2010</i>	13
11.	<i>Mining Industry Award 2010</i>	17
12.	<i>Oil Refining and Manufacturing Award 2010</i>	20
13.	<i>Pharmacy Industry Award 2010</i>	27
14.	<i>Rail Industry Award 2010</i>	18
15.	<i>Restaurant Industry Award 2010</i>	28
16.	<i>Salt Industry Award 2010</i>	18
17.	<i>Telecommunications Services Award 2010</i>	15
18.	<i>Water Industry Award 2010</i>	14
19.	<i>Wool Storage, Sampling and Testing Award 2010</i>	19

**ATTACHMENT C — Full Bench Memorandum**

MEMORANDUM

AM2016/13 and AM2014/239

4 YEARLY REVIEW OF MODERN AWARDS  
- Annualised salary - *Pastoral Award 2010* -  
common issue

*Fair Work Act 2009*

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Pursuant to ss.618 and 582 a Full Bench comprised of Vice President Hatcher, Deputy President Dean and Commissioner Saunders will deal with the above matter to review and determine –

- the applications set out at Attachment A of the Statement made on 31 May 2016 ([2016] FWC 3520); and
- the existing annualised salary terms in 19 modern awards that are set out in Attachment B of the statement.

Justice Ross  
President

31 May 2016

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Vice President Hatcher  
Deputy President Dean  
Commissioner Saunders

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