



STATEMENT AND DIRECTIONS

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—*Pastoral Industry Award 2010*

(AM2014/239 and AM2015/23)

Agricultural industry

JUSTICE ROSS, PRESIDENT

MELBOURNE, 26 AUGUST 2016

4 yearly review of modern awards - Pastoral Industry Award 2010.

[1] Under s.156 of the *Fair Work Act 2009* the Fair Work Commission (the Commission) is required to review all modern awards every four years. This Statement deals with a number of matters arising from the review of the *Pastoral Award 2010* (the Pastoral award) as part of the Award stage of the Review.

Technical and drafting issues

[2] A Statement¹ was issued on 17 August 2016 attaching a revised Exposure Draft and revised summary of submissions. Further to that Statement, a conference was held on 24 August 2016 to discuss further directions for the determination of the outstanding matters. Transcript of the conference proceedings is available on the Review website ([AM2014/239](#)).

[3] Further to the conference on 24 August 2016, it is directed that:

1. On or before **4.00 pm on Wednesday 28 September 2016**, interested parties are to file in the Commission any comments they may have in relation to the accuracy of the revised Exposure Draft and the revised summary of submissions set out in the attachments to the 17 August 2016 Statement. In doing so, interested parties are to identify:
 - (i) which, if any, technical and drafting claims are being pursued;
 - (ii) which, if any, technical and drafting claims are withdrawn (if not already so identified); and

¹ [\[2016\] FWC 5837](#).

- (iii) whether a party contends that a clause in the revised Exposure Draft has a different legal effect to the corresponding clause in the Pastoral award.
2. Where an interested party asserts, pursuant to direction 1(iii), that a clause in the revised Exposure Draft has a different legal effect to the Pastoral award, that party is to specify:
 - (i) the legal effect of the clause in the Pastoral award;
 - (ii) the legal effect of the clause in the revised Exposure Draft; and
 - (iii) an explanation of how they differ.

[4] Draft directions setting out the process for dealing with any outstanding matters identified are set out at Attachment A. Any comments on the draft directions are to be filed by **4.00 pm on Wednesday 28 September 2016**. Final directions will be issued by **Wednesday 5 October 2016**

[5] Following the conference held on 4 July 2016², the Commission agreed to undertake the following tasks:

- (i) prepare a document comparing the current coverage clause with the coverage clauses in the other agricultural awards³ and identify any differences;
- (ii) prepare a document identifying all inconsistencies throughout the Pastoral award in relation to the General Employment Conditions;
- (iii) prepare a short paper summarising the parties' respective positions in relation to items 30 and 62 of the revised summary of submissions and provide additional background information on the history of the provision if available; and
- (iv) research and publish findings on the relevant award history of clause 14.4(a)(i) of the revised Exposure Draft (that is, clause 23.4 of the Pastoral award).

[6] On or before **4.00 pm on Wednesday 28 September 2016**, interested parties are to confirm which, if any, tasks identified in paragraph [5] are still required. The Commission will release the required materials by **Wednesday 5 October 2016**.

Substantive claims—Learner shearer clause

[7] On 15 July 2016, Business SA filed an [initial submission](#) in which it submitted the draft variation determination set out in Attachment 2 to the Full Bench decision⁴ issued on 8 July 2016 'be clarified' in respect of clause 44.4(b)(ii) prior to its incorporation into the

² [Transcript](#) – 4 July 2016.

³ The modern awards in this group (as identified by the parties) include: *Aquaculture Award 2010*; *Horticulture Award 2010*; *Pastoral Industry Award 2010*; *Seafood Processing Award 2010*; *Silviculture Award 2010*; *Sugar Award 2010*; and *Wine Industry Award 2010*.

⁴ [\[2016\] FWCFB 4393](#).

Pastoral award. In the Statement issued on 17 August 2016, the Commission directed Business SA to file a further submission proposing alternative wording for clause 44.4(b)(ii) of the draft variation determination. On 23 August 2016, Business SA filed a [further submission](#) and proposed alternative wording as follows:

‘A learner who starts a run of sheds as a learner shearer, as defined under clause 44.4, is deemed a learner shearer until that run of sheds is completed, regardless of whether the learner shearer definition ceases to apply during that run of sheds.’

[8] On or before **4.00pm on Friday 2 September 2016**, interested parties are to file in the Commission any comments they may have in relation to the alternative wording proposed by Business SA as set out in paragraph [7] above.

[9] The Full Bench in matter AM2015/23 will determine the matter on the papers without the need for a further oral hearing.

[10] All material should be sent to amod@fwc.gov.au.

PRESIDENT

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ATTACHMENT A—Draft directions

DRAFT DIRECTIONS

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—*Pastoral Industry Award 2010* (AM2014/239)

Agricultural industry

JUSTICE ROSS, PRESIDENT

MELBOURNE, XX AUGUST 2016

4 yearly review of modern awards - Pastoral Industry Award 2010.

Further to the conference on 24 August 2016, it is directed that:

1. As set out at paragraph [3] of this statement, on or before **4.00 pm on Wednesday 28 September 2016**, interested parties are to file in the Commission any comments they may have in relation to the accuracy of the revised Exposure Draft and the revised summary of submissions set out in the attachments to the 17 August 2016 Statement.
2. On or before **4.00pm on Wednesday 26 October 2016** interested parties are to file written submissions and any evidence in support of the outstanding claims identified in their submissions filed in accordance with direction 1.
3. On or before **4.00pm on Wednesday 23 November 2016** interested parties are to file written submissions and any evidence in reply.
4. A short oral hearing will be held in Sydney at **10.00am on Wednesday 7 December 2016**.
5. All material should be sent to amod@fwc.gov.au.
6. Liberty to apply.

PRESIDENT

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