



STATEMENT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Plain language (AM2016/15)

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT HATCHER
COMMISSIONER HUNT

MELBOURNE, 11 AUGUST 2016

4 yearly review of modern awards – Plain language drafting

1. Introduction

[1] Further to the Statement issued on 15 July 2016¹ (the July Statement), the Fair Work Commission (the Commission) has now taken account of feedback received in response to the proposed process and timetable set out in the July Statement.

[2] This Statement confirms the process and timetable for further plain language re-drafting of modern awards as part of the 4 yearly review of modern awards (the Review).

2. Components of the plain language modern awards project

(i) Plain language draft standard clauses

[3] As foreshadowed in the July Statement², plain language draft standard clauses will be published later today in a comparison table. The table presents the re-draft alongside the exposure draft of the *Pharmacy Industry Award 2010* (Pharmacy Industry Award) dated 25 September 2015 upon which the re-draft is based and drafter comments. The publication attaches an information note that identifies modern awards that contain the standard clauses and those that differ.

[4] Directions will shortly be issued to commence a consultation process on the re-drafted clauses. The process will involve written submissions and written submissions in reply followed by a Conference. The Plain Language Full Bench may then require further consultation processes.

[5] Qualitative research and testing with award users may be undertaken following the receipt of submissions from interested persons. The results of any research undertaken will be published on the website.

[6] Plain language standard clauses will be inserted into exposure drafts as the drafts are periodically revised during the Award stage of the Review.

[7] Awards that contain provisions that differ from the standard term or contain allied provisions (see Attachment A to the standard clauses comparison document) will be dealt with by either the Plain Language Full Bench or through the Award stage proceedings for the relevant award. These matters will be dealt with after a decision on the plain language standard clauses has been issued.

(ii) Plain language draft Pharmacy Industry Award—award-specific provisions

[8] The revised exposure draft of the Pharmacy Industry Award was published on 22 July 2016.³

[9] Draft directions will shortly be issued seeking submissions on the revised exposure draft.

(iii) Plain language clauses of the Pharmacy Industry Award—*common* provisions

[10] Consultation on the clauses of the Pharmacy Industry Award that are *common* to other awards and exposure drafts will be undertaken in 2017, not before March 2017.⁴

[11] The clauses that were published with the [report](#) from the plain language modern award pilot will be revised and may be subject to qualitative research and testing with award users prior to consultation with interested persons.

[12] Written submissions and submissions in reply will be invited from interested persons as part of the consultation process followed by a Conference. The Plain Language Full Bench may then require further consultation processes.

(iv) Clerks—*Private Sector Award 2010*

[13] The *Clerks—Private Sector Award 2010* (Clerks Award) will be the first of the four selected awards to be subject to plain language re-drafting.⁵ A report to the Full Bench was published on 3 June 2016 outlining status of the issues to be determined in the Clerks Award. A revised exposure draft of the Clerks Award was published on [3 August 2016](#). The revised exposure draft reflects the status of technical and drafting issues at this point in time. To inform revisions to the exposure draft and summary of submissions, comment was sought from parties who had previously made submissions to the exposure draft. The amendments identified by BusinessSA in their submission of 29 July 2016⁶ have been incorporated in this version.

[14] As proposed by Ai Group⁷ and supported by BusinessSA, the outstanding technical and drafting issues in the Clerks Award will be dealt with prior to the commencement of plain language re-drafting. This will ensure the plain language re-drafting progresses efficiently. Accordingly, the 13 items marked as “O” in the [Revised summary of submissions](#) published on 4 August 2016 will be the subject of further written submissions in accordance with the directions issued today.

[15] Following resolution of these issues, the revised exposure draft will be updated and form the basis of plain language re-drafting of this award. Consideration will also be given to other Full Bench determinations made during the Review, the Guide to the Award Stage and

plain language drafting guidelines. Background research used to inform development of plain language drafts will be published for information and comment with the plain language draft.

[16] Applying plain language drafting principles and techniques may alter the form of terms agreed by interested parties in the technical and drafting stage with respect to the exposure draft published on 3 August 2016. Interested parties will be given an opportunity to comment on any such changes.

[17] The Commission sees merit in the addition of a ‘submissions in reply’ step for comments on the plain language draft as suggested by Ai Group and this has been incorporated in the revised timeline at Attachment A. The Plain Language Full Bench may require further consultation processes following the receipt of written submissions in reply.

(v) Other modern awards selected for plain language re-drafting

[18] The four modern awards (including the Clerks Award) selected for plain language re-drafting will be dealt with sequentially. However, as a matter of efficiency and to promote consistency, the *Hospitality Industry (General) Award 2010* (Hospitality Industry Award) and the *Restaurant Industry Award 2010* (Restaurant Industry Award) exposure drafts will be dealt with together. The updated timetable is set out at Attachment A.

3. User testing and research of the plain language terms

[19] Plain language drafts may be subject to qualitative research and user-testing to assist drafters to understand how provisions are used and how drafts are interpreted by award users. Findings from any qualitative research undertaken will be presented as drafter comments in comparison documents and information notes rather than standalone reports.

PRESIDENT

¹ [\[2016\] FWC 4756](#)

² [\[2016\] FWC 4756](#) at [12]–[16]

³ Revised exposure draft available from: <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-draft-fwc-220716.pdf>

⁴ [\[2016\] FWC 4756](#) at [17]–[19]

⁵ The other awards are the *Hospitality Industry (General) Award 2010*, *Restaurant Industry Award 2010* and *General Retail Industry Award 2010* (see July Statement at [23])

⁶ BusinessSA, [submission](#) 29 July 2016

⁷ Ai Group, [submission](#) 18 July 2016

Attachment A—Updated Plain language modern awards timetable

The process and timings depicted in this attachment are limited to consultation to be undertaken before any determinative processes by the Plain Language Full Bench. Further consultation processes may be required.

Pharmacy Industry Award only

Plain language draft Pharmacy Industry Award (see paragraphs [8]–[9])

	Date
Revised exposure draft (with plain language award-specific clauses) published	22 July 2016
Directions issued	11 August 2016
Deadline for written submissions on award-specific clauses	5 September 2016
Submissions summarised and published	w/c 12 September 2016
Conference	w/c 26 September 2016

All awards

Plain language draft *standard* clauses (see paragraphs [3]–[7])

	Date
Plain language draft standard clauses published for comment	11 August 2016
Deadline for written submissions	29 September 2016
Submissions summarised and published	w/c 3 October 2016
Deadline for reply written submissions	w/c 27 October 2016
Reply submissions summarised and published	w/c 31 October 2016
Conference	Early November 2016

All awards

Plain language draft *common* clauses (see paragraphs [11]–[12])

	Date
Plain language draft common clauses published for comment	Not before March 2017
Deadline for written submissions	TBC
Submissions summarised and published	TBC
Deadline for reply written submissions	TBC
Reply written submissions summarised and published	TBC
Conference	TBC

Four modern awards selected for plain language re-drafting

Clerks—Private Sector Award 2010 (see paragraphs [13]–[17])

	Date
Revised exposure draft and summary of submissions published	3 August 2016
Deadline for submissions regarding outstanding technical and drafting issues	8 September 2016
Deadline for reply submissions regarding technical and drafting issues	27 September 2016
Revised <i>Clerks—Private Sector Award 2010</i> exposure draft and summary of submissions published	w/c 3 October 2016
Plain language re-draft of award-specific clauses published for comment	w/c 10 October 2016
Deadline for written submissions	17 November 2016
Submissions on award-specific clauses summarised and published	w/c 21 November 2016
Deadline for reply written submissions	9 December 2016
Submissions in reply summarised and published	w/c 12 December 2016

Hospitality Industry (General) Award 2010 and Restaurant Industry Award 2010

	Date
Exposure drafts (including plain language award-specific clauses) published for comment	w/c 9 January 2017
Deadline for written submissions	24 February 2017
Submissions summarised and published	w/c 27 February 2017
Deadline for reply written submissions	24 March 2017
Submissions summarised and published	w/c 27 March 2017
Conference	w/c 3 April 2017

General Retail Industry Award 2010

	Date
Exposure draft (including plain language award-specific clauses) published for comment	w/c 10 April 2017
Deadline for written submissions	26 May 2017
Submissions summarised and published	w/c 29 May 2017
Deadline for reply written submissions	23 June 2017
Submissions summarised and published	w/c 26 June 2017
Conference	w/c 3 July 2017

w/c = week commencing

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