



STATEMENT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

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

(AM2014/239 and AM2015/23)

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT KOVACIC
COMMISSIONER SAUNDERS

MELBOURNE, 31 OCTOBER 2016

4 yearly review of modern awards - Pastoral Award 2010 - 'learner shearers'.

[1] Under s.156 of the *Fair Work Act 2009* (the Act) the Fair Work Commission (the Commission) is required to review all modern awards every four years. This Statement deals with finalising the 'learner shearers' claim made by The Australian Workers' Union (AWU) in relation to the review of the *Pastoral Award 2010* (the Pastoral award) as part of the Award stage of the Review.

[2] This Full Bench issued a decision on 8 July 2016¹ (the *July decision*) which dealt with the 'learner shearers' claim. Attachment 2 to the *July decision* set out a draft variation determination giving effect to our decision. Interested parties were given until 4.00 pm on Friday 15 July 2016 to comment on the draft variation determination.

[3] On 15 July 2016, Business SA filed a submission² proposing that the draft variation determination 'be clarified' in respect of clause 44.4(b)(ii) prior to its incorporation into the Pastoral award. In a Statement³ issued on 17 August 2016, the Commission directed Business SA to file a further submission proposing alternative wording to that of clause 44.4(b)(ii) of the draft variation determination. On 23 August 2016, Business SA filed a further submission,⁴ 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.'

[4] In a further Statement⁵ issued on 26 August 2016 the Commission directed interested parties to file in the Commission any comments they may have in relation to the alternative wording proposed by Business SA. On 2 September 2016 submissions were received from the AWU⁶ and the National Farmers' Federation (NFF).⁷ The AWU submitted its 'marginal preference is to retain the wording from Attachment 2 to the Full Bench's decision'⁸ and the NFF submitted:

‘The Draft Determination largely reflects the form of words agreed between the NFF and the AWU with some minor modifications consistent with the ‘plain language’ review of modern awards.

The NFF considers that the proposed learner shearers term in the Draft Determination is clear and easy to understand. It uses industry-specific language which is unlikely to cause confusion in the industry. As the term has some history (having been first introduced in 1965) our preference is that the learner shearers terms reflect the form of words contained in the Draft Determination.’⁹

[5] On 8 September 2016 Business SA were directed to advise the Commission as to whether it sought to pursue its submission. On 14 September 2016 Business SA filed correspondence¹⁰ in which it withdrew its previous submission.

[6] For the reasons set out in our *July decision*¹¹ we are satisfied that the variation set out at Attachment 2 to that decision is necessary to ensure that the Pastoral Award, together with the National Employment Standards, provides ‘a fair and relevant minimum safety net of terms and conditions’, in accordance with s.134 of the Act.

[7] We have issued a final variation determination¹² in the form set out in Attachment 2 to our *July decision*.¹³

PRESIDENT

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¹ [\[2016\] FWCFB 4393](#).

² Business SA [submission](#) 15 July 2016.

³ [\[2016\] FWC 5837](#).

⁴ Business SA [further submission](#) 23 August 2016.

⁵ [\[2016\] FWC 6060](#).

⁶ AWU [submission](#) 2 September 2016.

⁷ NFF [submission](#) 2 September 2016.

⁸ AWU [submission](#) 2 September 2016.

⁹ NFF [submission](#) 2 September 2016 at paras 8–9.

¹⁰ Business SA [correspondence](#) 14 September 2016.

¹¹ [\[2016\] FWCFB 4393](#).

¹² PR586646

¹³ [\[2016\] FWCFB 4393](#).