

[2016] FWCFB 7967

The attached document replaces the document previously issued with the above code on 4 November 2016.

Footnote 1 converted to an endnote

Endnotes 3 and 4 amended to refer to [2016] FWCFB 5621

Joanna Richardson

Associate to Justice Ross, President

Dated 4 November 2016



STATEMENT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Plain language re-drafting

(AM2016/15)

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT HATCHER
COMMISSIONER HUNT

MELBOURNE, 4 NOVEMBER 2016

4 yearly review of modern awards – Plain language project – Clerks—Private Sector Award 2010 – Revised plain language timetable

[1] As foreshadowed in the [Statement](#) issued on 15 July 2016¹, the initial Guidelines developed by Mr Eamonn Moran QC as part of the plain language pilot are being expanded and refined. These Guidelines will be a reference for further plain language re-drafting undertaken as part of the 4 yearly review.

[2] In order to give parties the opportunity to make submissions and attend consultations on the content of the Guidelines as outlined in a Statement issued today², the timetable set out in Attachment A to the Statement issued on 11 August 2016³ has been revised. The revised timetable for further plain language re-drafting is at Attachment A.

Clerks—Private Sector Award 2010 – outstanding technical and drafting issues

[3] Further to the [Statement](#) issued on 11 August 2016⁴ and [Directions](#) issued on 17 August 2016, the Commission has considered submissions received from interested parties in relation to 13 outstanding technical and drafting issues in relation to the exposure draft based on the *Clerks—Private Sector Award 2010* (Clerks exposure draft) that was first published on 18 December 2015.

[4] A further revised summary of submissions and revised exposure draft was published on 11 October 2016 to incorporate further agreed changes.

[5] As proposed by Ai Group⁵ and supported by BusinessSA, the Commission facilitated a written submissions process, prior to the commencement of plain language re-drafting, to deal with 13 items marked as “O—Outstanding” in the [Revised summary of submissions](#) that was published on 4 August 2016.

[6] The further revised exposure draft and summary of submissions published on 11 October 2016 reflect the status of technical and drafting issues at this point in time based

on all written and oral submissions received by the Commission in relation to the Clerks Award exposure draft.

[7] Following the most recent round of written submissions, one further issue has been raised and 5 issues have been agreed. The five agreed issues are:

- Item 4 (revising the reference to individual employees and majority of employees in the index of facilitative provisions and amendments to clause 18.2)
- Items 8 and 39 (no support for proposal to define ‘shiftworker’)
- Item 41 (no support for clarifying the meaning of ‘special rates’)
- Item 45 (no support for clarification of annual leave loading calculation)

[8] The following items listed as Outstanding in the further revised summary of submissions are to be dealt with along with all other award-specific clauses that will be subject to plain language re-drafting:

- Items 9 and 10 (Ai Group proposes amended wording for weekly hours of work provisions)
- Items 17, 18 and 40 (clarifying the effect of provisions for altering the span of ordinary hours)
- Item 35 (rest period after working overtime)
- Item 49 (inclusion of a provision for shiftworkers in a clause that excludes shiftworkers)
- An additional Item 50 (Ai Group has made a submission in relation to the use of inconsistent terminology for shift loadings, penalties and allowances within and across awards)

[9] The following items were listed as Outstanding in the further revised summary of submissions:

- (i) In Item 44 the Australian Municipal, Administrative, Clerical and Services Union (ASU) is seeking a substantive change to the definition of shiftworker. This status has been changed to S—Substantive.
- (ii) In Item 2, Community Connections Solutions Australia was seeking to vary the coverage of the Clerks award. This claim was withdrawn on 30 September 2016.

[10] The remaining substantive issues are Item 31, Superannuation, and Item 47, evidence required for the taking of leave.

[11] It is our view that it would be more efficient to deal with the award-specific outstanding technical and drafting issues together with all other award-specific provisions of the Clerks Award that will be subject to plain language re-drafting as part of the Award Stage of the Review. Attachment B identifies the award-specific, common and standard clauses of the revised Clerks Award exposure draft.

[12] Clauses that are common to other modern awards will be dealt with in a separate process as outlined in the Statement issued 11 August 2016.⁶

[13] The plain language re-draft will be based on the revised Clerks Award exposure draft published on 11 October 2016.

[14] Plain language re-drafting will alter the form of terms in the revised exposure draft, including terms agreed by interested parties reflected in the revised exposure draft. It is likely that plain language re-drafting will raise further technical and drafting issues.

[15] The objective of plain language re-drafting is to make the award simpler and easier to understand without changing its legal effect. However, because the intended outcome of the process is to improve precision, remove ambiguity and clearly convey how provisions are to be applied in the workplace, the process has the potential to reveal issues and generate debate about the entitlements and obligations under the award.

[16] Written and oral submissions received to date from interested parties in relation to the Clerks Award exposure draft will inform re-drafting activities. However, it may be necessary to seek further submissions in respect to the plain language re-draft to clarify the intended and actual effect of provisions of the Clerks Award.

[17] Interested parties will continue to be consulted on the plain language re-drafting of this award.

PRESIDENT

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Attachment A—Updated Plain language modern awards timetable

A.1 *Pharmacy Industry Award 2010*

Plain language draft Pharmacy Industry Award

	Date
Revised exposure draft (with plain language award-specific clauses) published	22 July 2016
Conference	26 September 2016
Deadline for written submissions	7 November 2016
Deadline for reply written submissions	21 November 2016
Submissions and reply submissions summarised and published	w/c 28 November 2016
Hearing	15 December 2016

A.2 All awards

Plain language draft *standard* clauses

	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	23 November 2016

Plain language draft *common* clauses

	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

Plain language guidelines (see [2016] FWCFB 7968)

	Date
Plain language draft guidelines published for comment	4 November 2016
Deadline for written submissions	17 November 2016
Submissions summarised and published	21 November 2016
Conference	23 November 2016

A.3 Four modern awards selected for plain language re-drafting***Clerks—Private Sector Award 2010*** (see paragraphs [13])

	Date
Revised <i>Clerks—Private Sector Award 2010</i> exposure draft and summary of submissions published	w/c 11 October 2016
Plain language re-draft of award-specific clauses published for comment	w/e 26 September 2016 w/c 12 December 2016
Deadline for written submissions	11 November 2016 17 February 2017
Submissions on award-specific clauses summarised and published	w/e 14 November 2016 w/c 20 February 2017
Deadline for reply written submissions	9 December 2016 24 March 2017
Submissions in reply summarised and published	w/e 12 December 2016 w/c 27 March 2017
Conference	w/e 21 November 2016 w/c 3 April 2017

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

	Date
Exposure drafts (including plain language award-specific clauses) published for comment	w/e 9 January 2017 w/c 16 January 2017
Deadline for written submissions	24 February 2017 20 April 2017
Submissions summarised and published	w/e 27 February 2017 w/c 24 April 2017
Deadline for reply written submissions	24 March 2017 1 June 2017
Submissions in reply summarised and published	w/e 27 March 2017 w/c 5 June 2017
Conference	w/e 3 April 2017 Late June 2017

General Retail Industry Award 2010

	Date
Exposure draft (including plain language award-specific clauses) published for comment	w/e 10 April 2017 w/c 22 May 2017
Deadline for written submissions	26 May 2017 20 July 2017
Submissions summarised and published	w/e 29 May 2017 w/c 27 July 2017
Deadline for reply written submissions	23 June 2017 1 September 2017
Submissions summarised and published	w/e 26 June 2017 w/c 4 September 2017
Conference	w/e 3 July 2017 Late September 2017

w/c = week commencing

Attachment B—Award-specific, common and standard clauses in the revised Clerks Award exposure draft

Revised Clerks Award exposure draft (11 October 2016)	Clause type
Part 1—Application and Operation	
1. Title and commencement	Award-specific (except clause 1.3)
2. The National Employment Standards and this award	Common
3. Coverage	Award-specific
4. Award flexibility	Standard
5. Facilitative provisions	Common
Part 2—Types of Employment and Classifications	
6. Types of employment	Award-specific
7. Classifications	Award-specific
Part 3—Hours of Work	
8. Ordinary hours of work (other than shiftworkers)	Award-specific
9. Breaks	Award-specific
Part 4—Wages and Allowances	
10. Minimum wages	Award-specific
11. Allowances	Award-specific
12. Superannuation	Standard
Part 5—Penalties and Overtime	
13. Overtime rates and penalties (other than shiftworkers)	Award-specific
14. Shiftwork	Award-specific
Part 6—Leave, Public Holidays and Other NES Entitlements	
15. Annual leave	Common
16. Personal/carer’s leave and compassionate leave	Common
17. Parental leave and related entitlements	Common
18. Public holidays	Common
19. Community service leave	Common
20. Termination of employment	Standard
21. Redundancy	Standard
Part 7—Consultation and Dispute Resolution	
22. Consultation	Standard
23. Dispute resolution	Standard
Schedule A—Classification Structure and Definitions	Award-specific
Schedule B—Summary of Hourly Rates of Pay	Common

Schedule C—Summary of Monetary Allowances	Common
Schedule D—Supported Wage System	Common
Schedule E—National Training Wage	Common
Schedule F—2015 Part-day Public Holidays	Common
Schedule G—Agreement To Take Annual Leave In Advance	Plain language – no further change
Schedule H—Agreement To Cash Out Annual Leave	Plain language – no further change
Schedule I—Definitions	Award-specific

¹ [\[2016\] FWC 4756](#) at [36]–[38]

² [\[2016\] FWCFB 7968](#)

³ [\[2016\] FWCFB 5621](#)

⁴ *ibid*

⁵ Ai Group, [submission](#) 18 July 2016

⁶ [\[2016\] FWCFB 5621](#)