



STATEMENT

Fair Work Act 2009
s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Pastoral Award 2010 (AM2014/239)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 15 MARCH 2018

4 yearly review of modern awards – Pastoral Award 2010.

[1] This Statement deals with an issue arising from the review of the *Pastoral Award 2010* as a part of the award stage proceedings of the 4 yearly review of modern awards.

[2] On 9 February 2018 a conference was held in Sydney to discuss six outstanding issues in relation to the *Pastoral Award 2010* (the current Award).¹ Item 5 of the Agenda related to Shiftwork and the definition of non-continuous work in clause 31.1 of the exposure draft.

[3] During the conference I indicated to parties that the issue of shift definitions would be referred to the plain language expert and a plain language draft of the clause would be provided to interested parties for comment. This was confirmed in the Report of 9 February 2018.²

[4] The plain language expert has reviewed clause 35 of the current Award having regard to the transcript of the 9 February 2018 conference and submissions of the Parties.³ In doing so it became apparent that, when the exposure draft was drafted, continuous and non-continuous systems of work had been conflated in an attempt to simplify the current award, resulting in an error in the definition of non-continuous work in the exposure draft.

[5] Given this underlying problem with the way the clause was drafted in the exposure draft, the plain language expert has re-drafted the whole of clause 31 in order to clarify the provisions and correct the errors identified by the parties. The plain language re-draft of clause 31 of the exposure draft is set out at **Attachment A** to this Statement.

[6] The plain language expert re-drafted the clause to maintain the two different work systems (continuous work and non-continuous work) so that the employers and employees working the different systems have an all-inclusive clause setting out the entitlements that apply to the respective systems of work.

[7] The definition of ‘continuous work’ has been moved to the continuous work clause where the definition is relevant.

[8] The plain language expert has also renamed ‘non-continuous shifts’ (clause 35.9(b) of the current award) as non-successive shifts to reduce confusion between non-continuous work

systems and non-continuous shifts. This is consistent with The Australian Workers' Union (AWU) submission.⁴ A definition of 'successive shift' has also been added to enable easy reference within the shiftwork rates table.

[9] The plain language expert has also addressed other minor inconsistencies within the clause that arose in the re-drafting process.

[10] Interested parties are invited to review the plain language re-draft of clause 35 of the current Award and make any comments by **4.00 pm, Thursday 5 April 2018**.

[11] Submissions should be sent to amod@fwc.gov.au.

[12] Liberty to apply.



<PR601206>

¹ [Agenda](#), conference of 9 February 2018.

² [Report](#) 9 February 2018 [15].

³ [Transcript](#), 9 February 2018; [AWU submission](#), 23 November 2016 paragraphs 23 - 27; [NFF submission](#), 26 October 2016, paragraphs 43 – 45.

⁴ [AWU submission](#), 23 November 2016 paragraph 27.

ATTACHMENT A

30. Ordinary hours and roster cycles (for non-shiftworkers)

30.1 Maximum hours in certain periods

(a) Normally, an employee's ordinary hours of work will be up to 8 hours a day between 6.00am and 6.00pm Monday to Friday.

(b) However, the employee and the employer may agree:

(i) that the employee is to work up to 12 ordinary hours in a day; and

(ii) to change the span of hours as allowed under clause 30.1(a).

(c) The employer and the majority of employees at a workplace may agree about how the 38 hour week is implemented at that workplace.

(d) In any four week period, a piggery attendant is not to work more than 152 ordinary hours.

30.2 Minimum payment for one week

If an employee works less than 38 hours in one week in a four week period, then the employer must pay the employee for 38 hours work for that week.

31. Continuous work hours—Ordinary hours and roster cycles for shiftworkers

31.1 Application of clause 31

Clause 31 applies at a workplace that operates on a continuous work basis.

31.2 Definition of "Continuous work"

Continuous work means work carried on with consecutive shifts for 24 hours on each day for 6 days in a row without interruption (other than for breakdowns, for meal breaks, or due to unavoidable causes beyond the employer's control).

31.3 Maximum hours in certain periods

(a) In any 28 day period, a shiftworker working a shift:

(i) is not to work more than 152 ordinary hours; and

(ii) is to average 38 ordinary hours a week, including crib time.

(b) However, the employer and the majority of employees concerned may agree on a roster system that results in the weekly average of 38 ordinary hours being achieved over a period that is longer than 28 days, but no longer than 26 weeks.

31.4 Length of shifts

(a) A shiftworker is to work a shift of up to 8 ordinary hours at the times the employer requires.

(b) If a shift is to be longer than 8 ordinary hours and up to 12 ordinary hours, then it is to be agreed by the employer and a majority of the employees in the plant, or work section, or sections concerned.

(c) A shift may not be longer than 12 ordinary hours.

31.5 Frequency of shifts

An employee must not be required to work more than one shift in any 24 hours, except at regular changeover of shifts.

31.6 Crib time for shiftworkers

A continuous hours shiftworker is allowed 20 minutes crib time on each shift, that time is counted as work.

32. Other than continuous work hours—Ordinary hours and roster cycles for shiftworkers

32.1 Clause 32 applies to workplaces that do not operate 24 hour a day 6 day a week

Clause 32 applies at a workplace that operates on a basis other than continuous work, as defined in clause 31.2.

32.2 Maximum hours in certain periods

(a) In any 28 day period, a shiftworker working a shift:

(i) is not to work more than 152 ordinary hours; and

(ii) is to average 38 ordinary hours a week.

(b) However, the employer and the majority of employees concerned may agree on a roster system that results in the weekly average of 38 ordinary hours being achieved over a period that is longer than 28 days, but no longer than 26 weeks.

32.3 Length of shifts

(a) A shiftworker is to work a shift of up to 8 ordinary hours at the times the employer requires.

(b) If a shift is to be longer than 8 ordinary hours and up to 12 ordinary hours, then it is to be agreed by the employer and a majority of the employees in the plant, or work section, or sections concerned.

(c) A shift may not be longer than 12 ordinary hours.

32.4 Frequency of shifts

An employee must not be required to work more than one shift in any 24 hours, except at regular changeover of shifts.

32.5 Meal breaks for shiftworkers

A shiftworker is allowed a meal break at least every 5 hours. They are to work continuously apart from any meal breaks.

33. Rostering shifts

33.1 Rosters—ordinary hours to be specified

A shift roster is to specify the start and finish time of the ordinary working hours of each shift.

33.2 Employer and employees may agree to change shift span by up to one hour

The spans of shifts that an employee may work are in clause 34.1(a) and 34.1(b)—Definitions of types of shift. The employer and the majority of employees concerned may agree to alter the span of hours over which shifts may be worked by up to one hour at either end.

33.3 Varying method of working shifts by agreement

(a) The employer and the majority of employees concerned may agree to vary the method of working shifts.

(b) The start and finish time of each shift may be varied to suit the circumstances of the establishment:

(i) by the employer and the majority of employees concerned agreeing to a variation; or

(ii) if there is no agreement, by the employer giving the employee 5 days' notice.

34. Penalty rates for shiftwork

34.1 Definitions of types of shift

(a) **Afternoon shift** means any shift finishing after 6.00 pm and at or before midnight.

(b) Night shift means any shift finishing after midnight and at or before 8.00 am.

(c) Permanent night shift means a night shift on which the employee carries out work during a period for which they are engaged on shift work and the employee:

(i) works only night shifts; or

(ii) remains on night shift for more than four consecutive weeks; or

(iii) works on a night shift cycle in which they do not have at least one third of their working time off night shift in each shift cycle (that time off might be arranged through a shift rotation or by the worker's shift alternating with another shift).

(d) Successive afternoon or night shift means a shift (that is not a permanent night shift as defined in paragraph (c)) on which the employee works either afternoon shifts or night shifts continuously for at least:

(i) 5 successive afternoons or nights on a 5 day site; or

(ii) 6 successive afternoons or nights or 6 day site.

(e) Non-successive afternoon or night shift means a shift (that is not a permanent night shift as defined in paragraph (c)) on which the employee works any mix of afternoon and night shifts in any:

(i) 5 successive days on a 5 day site; or

(ii) 6 successive days on a 6 day site.

34.2 Rates set in table

An employer must pay an employee working ordinary hours on shifts in accordance with clauses 0—Continuous work hours—Ordinary hours and roster cycles for shiftworkers and clause 32—Other than continuous work hours—Ordinary hours and roster cycles for shiftworkers the relevant percentage specified in column 2 of **Table—X Penalty rates for shiftwork** (depending on when the shift was worked as specified in column 1) of the minimum hourly rate of the employee, under clause 29—Minimum wages.

Table X—Penalty rates for Shiftwork

Column 1 Shift	Column 2 Penalty rate (% of minimum hourly rate)
Successive afternoon or night shift	115%
Non-successive afternoon or night	First 3 hours, 150%

Column 1 Shift	Column 2 Penalty rate (% of minimum hourly rate)
shift	After first 3 hours, 200%
Permanent night shift	130%
Saturday or Sunday	See clause 37— Saturdays and Sundays
Public holiday	See clause 38—Payment for public holidays