



STATEMENT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards

(AM2014/1 & Ors)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 2 JANUARY 2018

4 yearly review of modern awards – commencement of the second 4 yearly review – delayed until the completion of the current review

[1] Section 156 of the *Fair Work Act 2009* (the Act) obliges the Commission to conduct 4 yearly reviews of modern awards ‘starting as soon as practicable after each 4th anniversary of the commencement of Part 2-3’ of the Act. Part 2-3 commenced on 1 January 2010¹. The first 4 yearly review (the current review) commenced in February 2014. The second review is due to commence as soon as practicable after 1 January 2018 (the second 4 yearly review).

[2] A [Statement](#) was issued on 11 December 2017² (the December 2017 Statement) addressing the scheduling and commencement of the second 4 yearly review, following a number of inquiries about the issue. The December 2017 Statement outlined my *provisional view* that in light of the volume of work still required to complete the current review, ‘it is not practicable to commence the second 4 yearly review until the current review has been completed and parties have been given an opportunity to consider how the recently reviewed modern awards are operating in practice.’³

[3] Interested parties were invited to make submissions on the *provisional view*.

[4] Some 20 submissions were received in response to the December 2017 Statement, from the following parties:

- The Australian Industry Group (Ai Group)
- Australian Retailers Association (ARA)
- Australian Chamber of Commerce and Industry (ACCI)
- Australian Council of Trade Unions (ACTU)
- The Association of Professional Engineers, Scientists and Managers, Australia
- Construction, Forestry, Mining and Energy Union – Forestry, Furnishing, Building Products and Manufacturing Division
- Textile, Clothing and Footwear Union of Australia
- The Australian Workers’ Union
- Electrical Trades Union of Australia
- Australian Services Union
- Pharmacy Guild of Australia
- Civil Contractors Federation

- Australian Hotels Association
- Australian Nursing and Midwifery Federation
- National Tertiary Education Union
- Victorian Automobile Chamber of Commerce
- Australian Education Union
- Dental Hygienists Association of Australia Ltd
- Business SA
- Health Services Union

[5] The submissions are available on the Commission’s website, via the [4 yearly review webpage](#).

[6] All parties who filed a submission agreed with the *provisional view*.

[7] A number of submissions outline the resource intensive nature of the current review and noted that the commencement of the second 4 yearly review at this time is impractical. For example, the Ai Group ‘strongly supported’ the *provisional view*, noting that:

‘If a further Review is commenced before the current Review is completed, the following adverse consequences would most likely arise:

- The creation of a great deal of confusion for employers, employees and other parties;
- The imposition of unreasonable resource demands on industrial parties, given that the parties are currently devoting extensive resources to the large number of matters which are underway relating to the current 4 Yearly Review;
- The risk of unjust outcomes due to:
 - Confusion about the potential award variations being considered by the Commission;
 - Industrial parties being unable to devote sufficient resources to the second 4 Yearly Review, when their finite resources are being devoted to the first 4 Yearly Review.’⁴

[8] The ACTU also concurred with the *provisional view*:

‘It is not practicable for the Commission to commence the second four yearly review until the obligation to “conduct” the first four yearly review has been performed in full.

The various exposure drafts that have been produced during the first four yearly review will not be applicable until that first four yearly review has concluded. In addition, awards will not contain their “final” content reflecting the outcome of the remaining common issue proceedings until the first four yearly review is concluded. Commencing the second four yearly review before the first four yearly review had been concluded, or too quickly following its conclusion, would be impractical in those circumstances. It would be devoid of the benefit of evidence arising from any real practical experience of applying the awards in the form that the Commission had decided to make them having reviewed them in the first four yearly review.’⁵

[9] ACCI and the ARA both note that ‘the current four-yearly review of modern awards commenced shortly after the conclusion of the two-yearly review, with the effect that many employee and employer representatives have been in a resource intensive and near-continuous process of award litigation for several years since award modernisation.’⁶

[10] In light of the responses received to the December 2017 Statement, I confirm that I do not propose to commence the second 4 yearly review until the current review has been completed and parties have been given an opportunity to consider how the recently reviewed modern awards are operating in practice.

[11] There is a significant amount of work still to be done to finalise the current review and it is unlikely to be completed until late in the second half of 2018. A further statement will be issued shortly providing an indicative timetable for the completion of the current review.

PRESIDENT

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¹ Section 2 of the *Fair Work Act 2009*

² [2017] FWC 6623

³ [2017] FWC 6623 at [11]

⁴ Submission of the Australian Industry Group, 11 December 2017 at p.1

⁵ Submission of the Australian Council of Trade Unions, 14 December 2017 at paras 3-4

⁶ Submission of the Australian Retailers Association, 12 December 2017 at p.1 and submission of the Australian Chamber of Commerce and Industry, 12 December 2017 at p.1