



STATEMENT

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 yearly review of modern awards—Award stage (AM2014/1)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 4 APRIL 2019

4 yearly review of modern awards – status – conference 3 April 2019.

[1] A Statement issued on 28 February 2019¹ provided an overview of three procedural Statements that had been published regarding the process for the finalisation of the 4 yearly review of modern awards (the Review).

[2] As mentioned in the 28 February 2019 Statement, a conference was convened on Wednesday 3 April 2019 to deal with any questions regarding the scheduling and process for finalising the Review. Interested parties were asked to file a short written submission stating any issues or questions they wished to raise at the conference.

[3] Submissions were received from the following parties in response to the Statement:

- The Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU)
- The National Aboriginal and Torres Strait Islander Health Workers Association Limited (NATSIHWA)
- The Australian Nursing and Midwifery Federation (ANMF)
- Master Builders Australia (MBA)

[4] Each submission is dealt with below.

[5] The CFMMEU filed a submission² noting the ‘difficulties parties are facing in meeting the deadline for filing comments on the exposure drafts, particularly those parties with an interest in multiple awards.’

[6] The timetable for the publication of exposure drafts throughout 2019 was prepared to balance the completion of the Review with a number of competing priorities of the interested parties. If parties have a particular concern about a specific deadline they can write to the Commission regarding their concerns.³

¹ [2019] FWC 1262

² CFMMEU [submission](#), 27 March 2019

³ A similar concern has been raised by the Australian Industry Group in submissions filed in response to Group 1 and Group 2 exposure drafts.

[7] The CFMMEU also raised a concern regarding the definition of ‘all purposes’ and when this matter is to be finalised. The CFMMEU has a concern that the definition is deficient in that it does not expressly state that the payment is included in the ‘ordinary hourly rate’. The issue was referred to the plain language full bench for determination, and dealt with in a Statement issued on 28 February 2019.⁴ Interested parties were invited to comment on the Full Bench’s proposal and submissions relating to the matter were due to be filed on Friday 22 March 2019. It was outlined that if there is no opposition to the *provisional* view, the change would be applied to all exposure drafts as part of the plain language ‘light touch’ process.

[8] NATSIHWA filed a submission⁵ relating to the substantive claims in the *Aboriginal Community Controlled Health Services Award 2010*. These claims are being dealt with in AM2018/12. NATSIHWA requested that the Commission list a programming mention for AM2018/12 to discuss timetabling issues related to the filing and service of evidence.

[9] The matter has been listed for a Mention before Deputy President Gostencnik on Thursday 4 April 2019 at 10.30am.⁶

[10] The ANMF filed a submission⁷ providing comments on the exposure draft for the *Nurses Award 2010*. The ANMF note in their submission that they will raise particular issues relating to the exposure draft at the conference on 3 April 2019.

[11] The conference on 3 April was not intended to be an opportunity for parties to raise specific issues or comments in relation to exposure drafts. Rather, it was an opportunity for interested parties to raise questions regarding the scheduling and process for finalising the Review. Any comments regarding specific exposure drafts will be taken into account by the Commission when exposure drafts are updated and republished in line with ‘Update 2’⁸

[12] MBA filed a written submission relating to the Construction group of awards, which are being dealt with in matter AM2016/23. MBA submit that that exposure drafts for the Construction Awards were published on 22 March 2019, with the parties to file their first round of submissions on their content by 12 April 2019. The Construction group of awards contain the following awards:

- *Building and Construction General On-site Award 2010*
- *Joinery and Building Trades Award 2010*
- *Mobile Crane Hiring Award 2010*
- *Plumbing and Fire Sprinklers Award 2010*

[13] All of the above awards are in Group 4C. MBA submit that the ‘Construction Awards contain a significant number of references to matters which remain under consideration by both the Construction Awards Full Bench and others dealing with common issue matters.’⁹

⁴ [2019] FWC 1255 at [87] – [96]

⁵ NATSIHWA [submission](#), 27 March 2019

⁶ See [Notice of Listing – AM2018/12](#)

⁷ ANMF submission, 27 March 2019

⁸ See [2019] FWC 932 at [5]

⁹ MBA submission, 27 March 2019, p.1

MBA request that due dates for submissions on the exposure draft for the Construction Awards be deferred until the award stage proceedings have reached their conclusion.

[14] I acknowledge the force of the point raised by the MBA. Separate directions regarding the filing of submissions on the exposure draft for the Construction awards will be issued when the Full Bench in AM2016/23 has been finalised.

Timeline for publishing exposure drafts — 2019

[15] The following table sets out the final publication dates and submission dates for exposure drafts in Groups 1, 2, 3 and 4.

	Date	Event
Groups 1 – 2	13 February 2019	Exposure drafts for Group 1 republished
	15 February 2019	Exposure drafts for Group 2 ¹⁰ republished
	13 March 2019	Parties to comment on updated Group 1 exposure drafts
	15 March 2019	Parties to comment on updated Group 2 ¹¹ exposure drafts
	May 2019	Exposure drafts to be updated and republished with ‘plain language light touch’
	June 2019	Parties to comment on updated ‘plain language light touch’ exposure drafts
	August 2019	Exposure drafts to be republished incorporating adjusted rates and allowances as a result of the <i>2018-19 Annual Wage Review</i> decision
	September 2019	Parties to comment on updated rates in exposure drafts
	October 2019	Exposure draft to be issued as new consolidated award
	Groups 3 – 4	1 March 2019
8 March 2018		Exposure drafts for Group 3B, 3C and 3D ¹² republished
15 March 2019		Exposure drafts for Group 4A and 4B republished
22 March 2019		Exposure drafts for Group 4C and 4D ¹³ republished
29 March 2019		Parties to comment on updated Group 3A exposure drafts
29 March 2019		Exposure drafts for Group 4E and 4F republished
5 April 2019		Parties to comment on updated Group 3B, 3C, and 3D exposure drafts
12 April 2019		Parties to comment on updated Group 4A and 4B exposure drafts
19 April 2019		Parties to comment on updated Group 4C and 4D exposure drafts

¹⁰ With the exception of the exposure drafts for the *Fire Fighting Industry Award 2010* and the *Nurses Award 2010*

¹¹ Comments relating to the *Fire Fighting Industry Award 2010* and the *Nurses Award 2010* are due on 22 March 2019

¹² Comments relating to the *Pastoral Award 2010* and the *Horticulture Award 2010* are due on Friday 12 April 2019

¹³ The exposure draft for the *Live Performance Award 2010* will be published shortly

	Date	Event
	26 April 2019	Parties to comment on updated Group 4E and 4F exposure drafts
	May 2019	Exposure draft to be updated and republished with 'plain language light touch'
	June 2019	Parties to comment on updated 'plain language light touch' exposure drafts
	August 2019	Exposure drafts to be republished incorporating adjusted rates and allowances as a result of the <i>2018-19 Annual Wage Review</i> decision

[16] A [transcript](#) of the conference is available on the Commission's website. As mentioned at the conference, the Live Performance Award Exposure Draft will be published shortly and interested parties will have until **4 pm on Monday 29 April 2019** to comment.

[17] A mention will be held in relation to the *Registered and Licenced Clubs Award 2010* at **9:30 am on Wednesday 10 April 2019**.

[18] As mentioned at the conference, a statement issued on 28 February 2019¹⁴ set out the process for the plain language 'light touch' which will be undertaken as part of the second update of exposure drafts. An example of an exposure draft that has been through this process will be published shortly and a conference has been listed at **9:30 am on Monday 29 April 2019** to deal with the scope of the 'light touch'.

[19] As set out in a statement of 6 February 2019¹⁵, a number of Full Benches have been constituted to deal with substantive claims in modern awards in accordance with the [2019 timetable](#). Any questions about these matters should be directed to the chambers of the presiding member.

PRESIDENT

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¹⁴ [\[2019\] FWCFB 1255](#)

¹⁵ [\[2019\] FWC 717](#)