



STATEMENT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—Plain Language—Standard Clauses (AM2016/15)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 18 APRIL 2019

4 yearly review of modern awards – Plain language – plain language light touch – exposure draft update 2.

[1] A Statement issued on 28 February 2019¹ (the February 2019 Statement) provided an update on the status of the plain language project and outlined that the plain language ‘light touch’ process would include the following:

- (i) Changes to the structure of exposure drafts in Groups 1 to 3 in accordance with the plain language structure. This has already been completed for the awards in group 4.
- (ii) Definitions will be moved to clause 2 in all exposure drafts.
- (iii) Occupational health and safety references.²
- (iv) Annual, weekly and hourly rates in minimum wages tables.³
- (v) Cross-references in coverage clauses.
- (vi) Consistency with the Plain Language Guidelines and removal of archaic language.
- (vii) Re-drafting some particularly complicated clauses in exposure drafts to ensure that they are simple and easy to understand.

[2] An example of an exposure draft that has been through the light touch process will be published with this statement. The example is based on the Gardening and Landscaping Services Award exposure draft (the Gardening Award example). This has been prepared by staff of the Commission’s Modern Awards Team for the purposes of discussion at the

¹ [\[2019\] FWCFCB 1255](#)

² [\[2019\] FWCFCB 1255 at \[41\]](#)

³ *Ibid* at [28];

conference on 29 April 2019 and does not represent the concluded view of the Commission on any issue. Amendments are detailed in the table at the beginning of the Gardening Award example.

[3] Items (i) to (iii) at [1] have already been the subject of decisions by the Commission and will form part of the light touch update for each award. A comparison document showing how awards have been restructured is set out at **Attachment A**. Each of these items has been included in the Gardening Award example.

[4] Item (iv), annual, weekly and hourly rates in minimum wages tables, is currently the subject of a submissions process and a further decision will be issued after reply submissions are received on 19 April 2019. The Gardening Award example includes the proposal set out in the February 2019 Statement at [26].

[5] Item (v), cross references in coverage clauses, is currently the subject of a submissions process and a further decision will be issued after reply submissions are received on 19 April 2019. The Gardening Award example includes the proposal set out in the February 2019 Statement at [32].

[6] Items (vi) and (vii) are considered further below.

Consistency with the Plain Language Guidelines

[7] Chapter 6 of the Plain Language Guidelines sets out principles for the use of language in modern awards. These principles include; avoiding unnecessary jargon; using the active voice instead of the passive voice and removing archaic language.

[8] The August 2017 decision⁴ foreshadowed that archaic or overly technical language in modern awards would be replaced in accordance with the Plain Language Guidelines.

[9] An example of how the Guidelines have been applied in the Gardening Award example is set out below:

8. Types of employment

8.1 ~~An employee covered by this award must be one of the following: Employees under this award will be employed in one of the following categories:~~

- (a) ~~a full-time employee; or~~
- (b) ~~a part-time employee; or~~
- (c) ~~a casual employee.~~

8.2 At the time of engagement, an employer ~~will-must~~ inform ~~each-the~~ employee of the terms of their engagement and, in particular, whether they are to be full-

⁴ [\[2017\] FWCFB 4447](#)

time, part-time or casual. This decision ~~will then~~ must be recorded in a time and wages record.

Re-drafting some particularly complicated clauses in exposure drafts

[10] Throughout the Gardening Award example amendments have been made to clauses to adopt changes made in plain language exposure drafts where the original award clause was identical. An example of this is the Apprentice provisions at clause 12 of the Gardening Award example.

[11] Due to time and resource constraints other clauses for plain language re-drafting have not been identified; however, interested parties are asked to identify particularly complicated clauses that may benefit from plain language re-drafting in any awards.

Next steps

[12] The Gardening Award example will be published with this Statement. At the conference on 29 April 2019, parties will be asked to comment on the scope of the plain language light touch amendments. Parties will also be asked to identify any individual awards clauses that require plain language re-drafting.

[13] Following the conference, all exposure drafts will go through the light touch process and will be published in accordance with the timetable in the Statement issued on 4 April 2019⁵.

PRESIDENT

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PR707209

⁵ [\[2019\] FWC 2271](#)

Attachment A

Plain Language Exposure Draft – Table of Contents

The plain language exposure draft table of contents was originally published as [Attachment B](#) of the 2016 Plain Language Pilot Report and based on the Pharmacy PLED⁽¹⁾ in April 2016.

The table of contents has been modified since the original publication.

Current exposure drafts ⁽²⁾	Proposed exposure drafts
Part 1—Application and Operation	Part 1—Application and Operation of this Award
1. Title and commencement	Title and commencement
	Definitions (moved from Schedule G)
2. The National Employment Standards and this award	The National Employment Standards and this award
3. Coverage	Coverage
	Effect of variations made by the Fair Work Commission (moved to clause 1.3)
4. Award flexibility	Individual flexibility arrangements – standard clause
	Requests for flexible working arrangements – new model clause
5. Facilitative provisions	Facilitative provisions for flexible working practices
Part 2—Types of Employment and Classifications	Part 2—Types of Employment and Classifications
6. Types of employment	Types of employment
	Full-time employment (moved from Types of employment)
	Part-time employment (moved from Types of employment)
	Casual employment (moved from Types of employment)
	Apprentices (if applicable) (moved from Minimum wages)
	Junior employees (if applicable)
7. Classifications	Classifications
Part 3—Hours of Work	Part 3—Hours of Work
8. Ordinary hours of work and rostering	Ordinary hours of work
	Rostering arrangements (if applicable) (or award specific heading)
9. Breaks	Breaks

Current exposure drafts ⁽²⁾	Proposed exposure drafts
Part 4—Wages and Allowances	Part 4—Wages and Allowances
10. Minimum wages	Minimum rates includes: <ul style="list-style-type: none"> • School-based apprentices (if applicable) • Higher duties (if applicable) • Supported wage system (if applicable) • National training wage (if applicable)
	Payment of wages (moved from Minimum wages)
	Annualised salary (if applicable)
11. Allowances	Allowances
12. Superannuation	Superannuation
Part 5—Penalties and Overtime	Part 5—Overtime and Penalty Rates
13. Overtime	Overtime
14. Penalties	Penalty rates
Part 6—Leave, Public Holidays and Other NES Entitlements	Part 6—Leave and Public Holidays
15. Annual leave	Annual leave
16. Personal/carer's leave and compassionate leave	Personal/carer's leave and compassionate leave
17. Parental leave and related entitlements	Parental leave and related entitlements
	Leave to deal with family and domestic violence – new model clause
	Community service leave (moved from below Public holidays)
18. Public holidays	Public holidays
19. Community service leave	
20. Termination of employment	
21. Redundancy	
	Part X—Industry Specific Provisions (if applicable)
Part 7—Consultation and Dispute Resolution	Part 7—Consultation and Dispute Resolution
22. Consultation	Consultation about major workplace change – standard clause
	Consultation about changes to rosters or hours of work – standard clause
23. Dispute resolution	Dispute resolution – standard clause
	Part 8—Termination of Employment and Redundancy
	Termination of employment – standard clause (moved

Current exposure drafts ⁽²⁾	Proposed exposure drafts
	from Part 6)
	Redundancy – standard clause (moved from Part 6)
	Transfer to lower paid job on redundancy (merged with Redundancy)
	Employee leaving during redundancy notice period (merged with Redundancy)
	Job search entitlement (merged with Redundancy)
Schedules	Schedules
Schedule A—Classification Definitions	Schedule A—Classification Definitions (or award-specific heading)
Schedule B—Summary of Hourly Rates of Pay	Schedule B—Summary of Hourly Rates of Pay
Schedule C—Summary of Monetary Allowances	Schedule C—Summary of Monetary Allowances
	Schedule D—School-based Apprentices (if applicable)
Schedule D—Supported Wage System	Schedule E—Supported Wage System
Schedule E—National Training Wage	Schedule X—National Training Wage (deleted in 113 awards) ⁽³⁾
	Schedule F—Agreement for Time Off Instead of Payment for Overtime (if applicable)
	Schedule G—Agreement to Take Leave in Advance (if applicable)
	Schedule H—Agreement to Cash Out Annual Leave (if applicable)
Schedule F—2014 Part-day public holidays	Schedule I—Part-day Public Holidays
Schedule G—Definitions	Schedule G—Definitions (moved to clause 2)

⁽¹⁾ See [Attachment B](#) of the 2016 Plain Language Pilot Report. This Table of contents was proposed for the plain language exposure draft for the *Pharmacy Industry Award 2014*.

⁽²⁾ The current exposure draft Table of contents is taken from the current Group 1 to 3 exposure drafts.

⁽³⁾ The National Training Wage Schedule is contained in the *Miscellaneous Award 2010* and 113 awards refer to that award. The following 8 awards will retain the National Training Wage Schedule until the issue of relating to retention of award-specific schedules has been determined:

- *Airline Operations—Ground Staff Award 2010*;
- *Airport Employees Award 2010*;
- *Building and Construction General On-site Award 2010*;
- *Food, Beverage and Tobacco Manufacturing Award 2010*;
- *Joinery and Building Trades Award 2010*;
- *Manufacturing and Associated Industries and Occupations Award 2010*;
- *Mobile Crane Hiring Award 2010*; and
- *Sugar Industry Award 2010*.