DECISION

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

4 yearly review of modern awards—Funeral Industry Award 2010
(AM2018/23)

DEPUTY PRESIDENT SAMS
DEPUTY PRESIDENT BULL
COMMISSIONER CAMBRIDGE

SYDNEY, 5 AUGUST 2019

Funeral Industry Award 2010 – award modernisation – substantive issues – minimum payments for work on Saturdays, Sundays and public holidays – whether uniform allowance applies to all employees – determinations made – award modernisation review completed.

[1] In a Statement issued by the President on 1 October 2018 ([2018] FWC 6107), His Honour set out a process for determination of any remaining substantive issues the interested parties would be seeking to press in respect to the 4 yearly award modernisation review of the Group 4 Awards. In a schedule to the Statement, His Honour identified the issues in respect to the Funeral Industry Award 2010 (the 'Award'). These are:

> 'AWU seeks to vary the award by:
>
> - amending the overtime and penalty rates clause by inserting a minimum payment for time worked on public holidays.
>
> UV seeks to clarify:
>
> - that the Uniform allowance clause applies to all employees, not only full-time employees.
>
> - the interaction between the clauses relating to recalls and removals and the clauses providing minimum periods of engagement for part-time and casual employees.'

[2] These issues were referred to the Full Bench. On 16 November 2018, the Presiding Member listed the matter for mention and directions, and a timetable for submissions from interested parties on the remaining substantive issues was formalised. All parties at the mention agreed that the Full Bench should deal with the matters 'on the papers'. We propose to adopt that course.

Modern awards objective and current award clauses under consideration

[3] It is convenient, at this point, for us to refer to section 134 of the *Fair Work Act 2009* (Cth) setting out the modern awards objective:

‘**134 The modern awards objective**

What is the modern awards objective?

(1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

(a) relative living standards and the needs of the low paid; and

(b) the need to encourage collective bargaining; and

(c) the need to promote social inclusion through increased workforce participation; and

(d) the need to promote flexible modern work practices and the efficient and productive performance of work; and

(da) the need to provide additional remuneration for:

(i) employees working overtime; or

(ii) employees working unsocial, irregular or unpredictable hours; or

(iii) employees working on weekends or public holidays; or

(iv) employees working shifts; and

(e) the principle of equal remuneration for work of equal or comparable value; and

(f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and

(g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and

(h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

This is the modern awards objective.

When does the modern awards objective apply?

(2) The modern awards objective applies to the performance or exercise of the FWC’s modern award powers, which are:

(a) the FWC’s functions or powers under this Part; and

(b) the FWC’s functions or powers under Part 2-6, so far as they relate to modern award minimum wages.

Note: The FWC must also take into account the objects of this Act and any other applicable provisions. For example, if the FWC is setting, varying or revoking modern award minimum wages, the minimum wages objective also applies (see section 284).’

[4] The current award clauses and other related provisions referred to in this decision are as follows:

Clause 24.2(b):

> (b) Where an employee is recalled to work before 7.00 am or after 7.00 pm for other than arranged overtime, the employee will be paid a minimum of one hour's pay at the appropriate rate of overtime on each occasion the employee is recalled to work overtime.

Clause 24.4(a):

> (a) Where an employee is called to undertake removals between the hours of 7.00 pm and midnight and work is completed at or prior to midnight, the employee will be paid 150% of their ordinary rate for the first three hours of work and 200% of their ordinary rate thereafter with a minimum payment of two hours at the appropriate rate.

Clause 24.4(b):

> (b) Where an employee is called to undertake a removal, any portion of which occurs between the hours of midnight and 7.00 am, the employee will be paid 200% of their ordinary rate with a minimum payment of two hours.

Clause 10.4(d):

> (d) An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.

Clause 10.5(c):

> (c) On each occasion a casual employee is required to attend work the employee must be paid for a minimum of four hours' work, including when engaged more than once in any day. This minimum payment is made whether the casual employee is required to work the full four hours or not.

[5] Minimum engagement provisions for work on weekends (aside from weekend removals) are contained in clauses 24.1(a) and (b) of the Award.

Clause 24.1(a)(i):

> (i) For work performed on a Saturday, employees will be paid at the rate of 150% of their ordinary rate for the first three hours worked, and 200% of their ordinary rate thereafter, with a minimum of two hours' pay.

Clause 24.1(a)(ii):

> (ii) Where an employee is actually engaged in the carrying out of a funeral on a Saturday, the employee will receive a minimum of four hours' pay at the following rates:
>
> 1. if the work is completed in three hours or less, the total minimum payment will be paid at 150% of their ordinary rate; and/or

> 2. if the work exceeds three hours, all additional time will be paid at 200% of their ordinary rate.

Clause 24.1(b):

> (b) All work performed on a Sunday will be paid at 200% of their ordinary rate, with a minimum payment of two hours' pay.

[6] Clause 15.8 deals with the Uniform Allowance as follows:

> Where a full-time employee is required to wear a uniform, the employer will reimburse the employee for the cost of purchasing and laundering the uniform.

SUBMISSIONS

[7] Submissions were received from:

- Australian Workers' Union ('AWU');
- United Voice ('UV');
- Australian Business Industrial ('ABI');
- NSW Business Chamber Limited ('NSWBC'); and
- Australian Federation of Employers and Industries ('AFEI').

It is convenient to set out the moving parties' proposed draft clauses on each issue, their submissions in support and reply submissions to those of ABI, NSWBC and AFEI.

Minimum engagements for part time and casual employees

[8] The AWU proposes that the following words be added to Cl 24 of the Award under the Heading:

> 'Work performed by part time and casual employees as prescribed in c 24 is subject to the applicable minimum engagement periods prescribed at clause 10.4(d) and 10.5(c) respectively.' (three hours and four hours)

[9] The AWU submits that this variation is necessary to clarify the operation of the minimum engagement provisions pertaining to casual and part time employees, regardless of any other minimum engagement provision in the Award which only apply to full time employees. The AWU understood that this is what the Award currently provides, but this view is not shared by all parties; hence the need for clarification to provide consistency and certainty; see: *4 yearly review of modern awards – Award stage – Group 4 awards* [2018] FWCFB 1548 (the 'March 2018 Decision').

[10] The AWU noted the Full Bench in the March 2018 Decision formed a provisional view that the minimum engagement for casual employees provided for in Cl 10.5(c) applies to any work undertaken, including recalls, removal and work on weekends (two hours minimum). The AWU's position was supported and reaffirmed by the Full Bench in *4 yearly review of modern awards – Award stage – Group 4 awards* [2018] FWCFB 4175 (the 'August 2018 Decision').

[11] The AWU submitted that the same *ratio* applied to the minimum employment periods of three hours for part time employees. However, the Full Bench in the March 2018 Decision formed a provisional view that while the minimum three hours applied to work performed by part time employees, it did not apply to recalls (one hour at overtime rates) or removals (two hours). It was said that the distinction explained that the minimum engagement provisions only apply to part time employees' regular pattern of work; not where the part time employee is working in excess of the regular pattern of work. The basis of this was the view that minimum engagement provisions for part time employees required protection where recall and removal work was involved. However, the AWU believed that the protection for part time employees as to recalls and removals was already protected by clause 10.4(d). Moreover, it would not make sense, and would introduce inconsistency and confusion, to have a three hour minimum for some purposes, such as work on weekends, but not for other purposes such as recalls or removals.

[12] The AWU observed that the Full Bench ultimately supported the Union's position when it said in the August 2018 Decision:

> 'Upon reflection, it appears that our *provisional* view set out in the *March 2018 decision* is incorrect and the AWU submission has merit. We agree that the specific minimum engagement provisions relating to part-time and casual employees (clauses 10.5 and 11.3) are applied for these types of employees instead of the minimum engagement provisions set out at clauses 19.4 and 20.1.' (*emphasis as in original*)

The AWU submits that this Full Bench should adopt the same conclusion to ensure consistency and ease of comprehension consistent with the modern awards objective.

[13] United Voice supported the AWU's submissions and referred to the various provisions of the Award which, when read together, demonstrate that part time and casual employees' minimum engagements are expressly set out in Cls 10.4(d) and 10(5)(c). Cl 24 only deals with full time employees, despite the omission of the words 'full time'.

[14] UV submitted that by the inclusion of words for a minimum three hours on **any** shift' (*emphasis added*), no exception is made for weekend shifts, overtime or removal shifts. The same principle applies in Cl 10.5(c) in respect to casual employees where the words state 'on such occasion a casual employee is required to attend work'. No exceptions are mentioned.

[15] UV referred to the rationale for minimum engagements recognised in *4 yearly review of modern awards – Casual employment and Part-time employment* [2017] FWCFB 3541 of 5 July 2017 at [399]:

> 'Minimum engagement periods in awards have developed in an ad hoc fashion rather than having any clear founding in a set of general principles. However their fundamental rationale has essentially been to ensure that the employee receives a sufficient amount of work, and income, for each attendance at the workplace to justify the expense and inconvenience associated with that attendance by way of transport time and cost, work clothing expenses, childcare expenses and the like. An employment arrangement may become exploitative if the income provided for the employee's labour is, because of very short engagement periods, rendered negligible by the time and cost required to attend the employment. Minimum engagement periods

> are also important in respect of the incentives for persons to enter the labour market to take advantage of casual and part-time employment opportunities (and thus engage the consideration in paragraph (c) of the modern awards objective in s.134).'

[16] UV submitted the Award should not be read down to reduce minimum engagements for casual and part time employees, as little as one hour, which would not cover the expense and inconvenience for the employee. This would reduce the incentive for employees to engage in part time and casual employment and works against s 134(c) of the Act. UV noted that in both the March and August 2018 Decisions of the Full Bench, it was said that minimum engagements should apply to all shifts; see: [12] above.

For ABI and NSWBC

[17] After setting out the relevant provisions in Cls 10.4, 10.5, 24(1)(a) and (b), the two employer organisations opposed the Full Bench's view in the August 2018 Decision and the Union's proposed wording, and submitted that:

> '2.12 To the extent that there is tension or conflict between the existing minimum engagement provisions, the principle of *generalia specialibus non derogant* should be applied. That is, that where there is a conflict between the general and specific provisions, provisions of general application should give way to the specific, and the specific provisions shall prevail.
>
> 2.13 In this case, clauses in 24.1(a) and (b) provide a specific minimum engagement for particular types of work, whereas clauses 10.4 and 10.5 provide general provisions by class of employee. In our submission, clauses 24.1(a) and (b) should be given their full effect and should operate to the exclusion of the generic minimum engagement provisions operating by class of employee.'

AFEI

[18] The AFEI generally submitted that as the Unions' proposals are substantive changes to the Award which would see increased labour costs and place a regulatory burden on employers. No evidence had been advanced to support these changes. The AFEI rejected the Unions' submissions that the minimum engagement provisions for removals, recalls and weekend work are for the benefit of full time employees only. This is an inaccurate interpretation which takes no account of the ordinary meaning of the words, the structure and industrial context of the Award, and the purpose of the minimum engagement provisions; see: *City of Wanneroo v Australian Municipal, Administrative, Clerical and Services Union* [2006] FCA 813 at 53. It was put that in each of the above provisions the word used is 'employee'. It obviously does not distinguish between categories of employees; therefore, the provision in respect to removals, recalls and weekend work applies to all employees, irrespective of their category of employment. The AFEI submitted that the structure and context of the Award does not favour an interpretation that Cl 24 only applies to full time employees. The specific should supersede the general; see: *Perpetual Executors and Trustees Association of Australia Limited v Federal Commissioner of Taxation* (1948) CLR 1 at 29 and *Refrigerated Express Lines (A/Asia) Pty Ltd v Australian Meat and Live-Stock Corporation* (1980) 29 ALR 333 at 347.

[19] It was put that the Unions' interpretation would mean part time and casual employees performing removal work would receive substantially more than the time to actually perform the work. This would be inconsistent with modern awards objective:

> (a) the need to promote flexible modern work practices and the efficient and productive performance of work; and
>
> (b) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden.

[20] The AFEI further submitted that:

> 'An employee may be recalled to work for other than arranged overtime when an urgent or unforeseen circumstance arises outside the spread of ordinary hours. As the Recall to Work Provision contemplates a situation in which overtime was not arranged between the employer and employee, it follows the employee would not have had at least 48 hours' notice of the shift. Therefore, the period of work could not be considered a shift for the purposes of the Part-time Minimum Engagement Provision.
>
> Similarly, the requirement to perform removal work outside the spread of ordinary hours may not be foreseeable or otherwise able to be planned, as the need for this work to be done may arise only when the employer is notified of a death. Given this, an employee may not have 48 hours' notice of being required to perform removal work. Therefore, the period of work also could not be considered a shift for the purposes of the Part-time Minimum Engagement Provision.'

[21] The AFEI noted that if the part time minimum engagement of three hours applied for funerals on a Saturday where a four hour minimum applies, the part time employee is disadvantaged. This corroborates the AFEI's view as to how the specific provisions are to operate.

Minimum payment for public holidays

[22] Clause 24.1 of the Award provides for a minimum of two hours' pay for work performed on a Saturday or Sunday, but is silent in regard to work performed on a public holiday. The Unions seek a substantive variation to the Award to at least ensure a minimum engagement on a public holiday is the same as that which applies to work on a Saturday or Sunday. There appeared to be no explanation why the Award is silent on this matter, when the Award places the same value on the work performed on a Sunday to work on a public holiday. The AWU noted that the Victorian *Funeral Industry Award 2003* similarly had no such provision.

[23] However, other pre-reform instruments did provide for a three hour minimum payment such as the *A.C.T. Funeral Industry Award 2002* AP815104CRA and four hours in the *Funeral Industry Award (South Australia) 2003* AP827092 and Queensland's *Funeral Services Award – State 2002* AN140127. The AWU submitted that its proposal will ensure consistency. Further, its impact will be minor; firstly, it would only apply to full time employees as casual and part time employees are protected by the specific minimum engagement clauses proposed earlier; and secondly, it would be rare for a full time employee to perform work on a public holiday for less than two hours.

ABI and NSWBC

[24] ABI and NSWBC did not oppose both of the variations sought by the AWU, provided they do not interfere with other minimum engagement entitlements and do not result in 'double dipping' on public holidays.

AFEI

[25] The AFEI submitted this claim was not only unnecessary, but it was not minor. It was put that:

> 'a. First, the 200% penalty rate for time worked on a public holiday is sufficient to compensate for the expense and inconvenience associated with working on a public holiday; and
>
> b. Secondly, if the full-time employee has ordinary hours of work on the day or part-day that is a public holiday, then in addition to receiving the 200% penalty rate for time worked, an employer must pay the employee at their base rate of pay for hours on which they didn't work; and
>
> c. Thirdly, an employee may refuse an employer's request to work on a public holiday if the request is not reasonable or the refusal is not unreasonable, taking into account a range of circumstances, including the employee's personal circumstances.' (*footnotes omitted*)

[26] The AFEI believed this claim creates a new entitlement, which would be costly and increases the regulatory burden on employers, without any evidentiary foundation for doing so.

Uniform allowance

[27] UV noted that in the Commission's Exposure Draft of 16 November 2016, the Full Bench asked the parties:

> 'to confirm whether Cl 16.3(c) [now 15.8] applies to all employees (i.e. part time and casual employees also)'. The parties could not agree and the question is now sought to be answered in the substantive review.

[28] It was UV's position that the current clause applies to full time, part time and casual employees. This is so because when the Award is read as a whole:

(a) part time employees received pro rata pay and conditions to those of full time employees (Cl 10.4(a)(iii)); and

(b) the casual loading does not prescribe that it is paid in lieu of any entitlement.

[29] UV proposed the following clause:

> 'Where an employee is required to wear a uniform, the employer will reimburse the employee for the cost of purchasing and laundering the uniform.'

[30] Alternatively, the Award should be amended to provide all employees with an entitlement to the uniform allowance as payment of the allowance only to full time employees is unjustifiable and does not meet the modern awards objective for the following reasons:

(1) It is irrelevant whether an employee is a full time, part time or casual employee, if they are required to wear a uniform for reasons of their role, public and client perception, OHS issues or an internal policy of the employer. It would be illogical to require of a full time employee to wear a uniform, but not a casual or part time employee performing the same duties.

(2) Costs of laundering a uniform, although presumably less for part time and casual employees means a requirement to wear and launder the uniform. It also means that costs for any employee will likely have a greater impact on a casual or part time employee than a full time employee. It is only fair and appropriate for all employees to be reimbursed for the cost of purchasing and laundering uniforms.

[31] UV submitted that the matter could be resolved by the proposed clause above at [28]. Further, the proposal will meet s 134(1)(a) and (g) of the modern awards objective.

[32] The AWU supported UV's submissions which will clarify that a uniform allowance should apply to both part time and casual employees. There is no apparent reason why the allowance is not paid to those employees.

ABI and NSWBC

[33] ABI and NSWBC submitted that contrary to UV's claim that the allowance is already paid to part time and casual employees, the Award has operated for the last nine years and the allowance only applies to full time employees, as expressly stated in Cl 15.8:

> 'Where a full-time employee is required to wear a uniform, the employer will reimburse the employee for the cost of purchasing and laundering the uniform.'

[34] Its introduction to apply to other employees would be costly, and particularly impacts on small operators who are already under financial strain. It was submitted that Cl 10(4)(a)(iii) could provide no basis to grant the claim as it would ignore both the express words in Cl 15.8 and the logistical issues in pro-rating the cost and laundering of a uniform. No comfort can be had in the fact that casual loading, paid in lieu of other entitlements, does not refer to the laundry allowance. Further, the pre-reform Awards did not contain such a provision and the Full Bench expressly stated when the Award was made, that '… 15.8 had been redrafted' with a deliberate intent that it applied to full time employees only.

AFEI

[35] The AFEI's submissions were similar to the other employer organisations. It noted the history of the Award since 2009 which it claimed made abundantly clear that the allowance was to be paid to full time employees only. Contrary to the Unions' submissions, there was no evidence that the cost for a casual employee to launder a uniform would be significant.

CONSIDERATION

[36] In the *4 Yearly Review of Modern Awards: Preliminary Jurisdiction Issues* [2014] FWCFB 1788 decision, the Full Bench of the Commission said:

> '[31] The modern awards objective is directed at ensuring that modern awards, together with the NES, provide a 'fair and relevant minimum safety net of terms and conditions' taking into account the particular considerations identified in paragraphs 134(1)(a) to (h) (the s.134 considerations). The objective is very broadly expressed. The obligation to take into account the matters set out in paragraphs 134(1)(a) to (h) means that each of these matters must be treated as a matter of significance in the decision making process. As Wilcox J said in Nestle Australia Ltd v Federal Commissioner of Taxation:
>
> > "To take a matter into account means to evaluate it and give it due weight, having regard to all other relevant factors. A matter is not taken into account by being noticed and erroneously discarded as irrelevant."
>
> [32] No particular primacy is attached to any of the s.134 considerations and not all of the matters identified will necessarily be relevant in the context of a particular proposal to vary a modern award.
>
> [33] There is a degree of tension between some of the s.134(1) considerations. The Commission's task is to balance the various s.134(1) considerations and ensure that modern awards provide a fair and relevant minimum safety net of terms and conditions. The need to balance the competing considerations in s.134(1) and the diversity in the characteristics of the employers and employees covered by different modern awards means that the application of the modern awards objective may result in different outcomes between different modern awards.
>
> [34] Given the broadly expressed nature of the modern awards objective and the range of considerations which the Commission must take into account there may be no one set of provisions in a particular award which can be said to provide a fair and relevant safety net of terms and conditions. Different combinations or permutations of provisions may meet the modern awards objective." [endnotes omitted]

[37] In the *Security Services Industry Award 2010* [2015] FWCFB 62 four yearly review decision, the Full Bench of the Commission said at [7]-[8]:

> '[7] The following general observation in a preliminary Full Bench decision about the Review is relevant to the relationship between the decision to create a modern award, the historical context and the Review:
>
> > "[60] … 3. The Review is broader in scope than the Transitional Review of modern awards completed in 2013. The Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net taking into account, among other things, the need to ensure a 'stable' modern award system (s.134(1)(g)). The need for a 'stable' modern award system suggests that a party seeking to vary a modern award in the context of

> the Review must advance a merit argument in support of the proposed variation. The extent of such an argument will depend on the circumstances. Some proposed changes may be self evident and can be determined with little formality. However, where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation. In conducting the Review the Commission will also have regard to the historical context applicable to each modern award and will take into account previous decisions relevant to any contested issue. The particular context in which those decisions were made will also need to be considered. Previous Full Bench decisions should generally be followed, in the absence of cogent reasons for not doing so. The Commission will proceed on the basis that prima facie the modern award being reviewed achieved the modern awards objective at the time that it was made."
>
> [8] While this may be the first opportunity to seek significant changes to the terms of modern awards, a substantive case for change is nevertheless required. The more significant the change, in terms of impact or a lengthy history of particular award provisions, the more detailed the case must be. Variations to awards have rarely been made merely on the basis of bare requests or strongly contested submissions. In order to found a case for an award variation it is usually necessary to advance detailed evidence of the operation of the award, the impact of the current provisions on employers and employees covered by it and the likely impact of the proposed changes. Such evidence should be combined with sound and balanced reasoning supporting a change. Ultimately the Commission must assess the evidence and submissions against the statutory tests set out above, principally whether the award provides a fair and relevant minimum safety net of terms and conditions and whether the proposed variations are necessary to achieve the modern awards objective. These tests encompass many traditional merit considerations regarding proposed award variations.' (*footnotes omitted, underlining added*)

[38] It is helpful to set out the genesis of the creation of the *Funeral Industry Award 2010*. Prior to the modern Award, the funeral industry was regulated by a number of pre-reform awards and NAPSAs; namely:

- Funeral Industry Award (South Australia) 2003, AP827092;
- A.C.T. Funeral Industry Award 2002, AP815104CRA;
- Funeral Industries (State) Award 2005, AN120221;
- Funeral Services Award – State 2002, AN140127;
- Funeral Directors' Assistant's Award No. 18 of 1962, AN160136; and
- Funeral Industry Award 2003, AP825425.

[39] It is accepted that the pre-reform Victorian *Funeral Industry Award 2003*, AP825425 was the basis for the modern Award.

[40] The current provisions in the Award presently under consideration are found at [4] and [5] above.

Minimum engagements for casual and part time employees who work on a Saturday, Sunday or public holiday (including recalls and removals)

[41] We agree that the industrial purpose of minimum engagements in awards is that which was helpfully summarised by the Full Bench in *4 yearly review of modern awards – Part-time employment and Casual employment* [2018] FWCFB 4695 as 'to ensure that the employee receives a sufficient amount of work and income, for such attendance at the workplace to justify the expense and inconvenience associated with that attendance by way of transport time and cost, work clothing expenses, childcare expenses and the like.'

[42] It is self-evident that the cost and inconvenience for the justification of minimum engagement periods is no different for a casual, part time or full time employee. The employees' category of employment is irrelevant for that purpose. When viewed in this way, it makes no logical, practical or industrial sense to draw a distinction between the minimum engagements for casual and part time employees to full time employees performing the same work; particularly when there is no rational basis for a casual or part time employee to be materially disadvantaged if the current provisions are read literally, which might result in a one hour minimum engagement. This would be unrealistic and contrary to the modern awards objective.

[43] In addition, we see no reason to depart from the Full Bench's corrected provisional view in the August 2018 Decision that it agreed the AWU's submission (on this issue) had merit; see: [12] above.

[44] Although it is true we have no direct evidence of the extent of casual and part time engagements on weekends and public holidays, we take judicial notice of the industry reality, as put by the AWU that:

(a) weekend work in this industry is likely to be limited and on public holidays, rare; and

(b) even if there is work required on a weekend or public holiday, it is likely to be for more than two hours.

We accept this rationale similarly applies for recalls and removals.

[45] Further, in our view, the current Award provisions do not reflect the position in the majority of the pre-reform instruments which apply in this industry; see: [23] above. It is not apparent why there should be a distinction between the nature of the work performed (recalls or removals) and any other work. Accordingly, we reject the AFEI's submission that the cost to employers is significant, or that any regulatory requirements on employers will be more burdensome.

[46] We note that ABI and NSWBC did not oppose the variation sought by the AWU in respect to public holidays, provided they do not interfere with other minimum engagement entitlements and do not result in 'double dipping' on weekends.

[47] We are satisfied that the determination we intend to make is consistent with the modern awards objective. It will ensure consistency, avoid confusion and provide easier to understand provisions applicable to work on weekends, public holidays and for recalls and

removals. We determine that Cl 24 of the Award be amended, by adding a new sub-clause 24.6 as follows:

> '**Work performed by part time and casual employees as prescribed in clause 24 is subject to the applicable minimum engagement periods prescribed at clause 10.4(d) and 10.5(c) respectively.**'

Uniform allowance

[48] One of the reasons why an employer requires their employees to wear a uniform is to promote their business to customers and the general public and associate their business name with a high level of professional standards and market recognition. It is difficult to reconcile that the cost of purchasing a uniform and its laundering should only be reimbursed for full time employees and that part time and casual employees, where required to wear and launder a uniform, should do so at their own expense.

[49] We accept there may be a cost to the employer, but we consider it to be negligible and outweighed by the positive impact on the employer's business by having all of its employees appropriately attired by a brand recognition uniform. The entitlement to the reimbursement of the cost of purchasing and laundering a uniform will only arise where the employee is required by the employer to wear a uniform. It is also a common requirement that uniforms are returned when the employment relationship ends. This is only possible where the uniform remains the property of the employer.

[50] As advanced by the Unions, a casual loading does not compensate for the non-payment of a uniform or its associated laundering. It is, of course, problematic that such a provision could be pro-rated for part time employees, and we would see little utility in attempting to do so.

[51] On the other hand, the obvious reality is that most casual and part time employees will not be impacted as much as full time employees, in terms of purchasing, laundering and wear and tear on uniforms.

[52] We have been persuaded that the proposed variation of United Voice will ensure the modern awards objective is met and the application of the provision will be clarified.

[53] We determine that the existing Cl 15.8 be deleted and in lieu thereof the following be inserted:

> '**Where an employee is required to wear a uniform, the employer will reimburse the employee for the cost of purchasing and laundering the uniform.**'

[54] By the determinations we have made above, the award modernisation review of the *Funeral Industry Award 2018* is now complete. An amended Award will be published on the Commission's website in due course.

[55] These proceedings are concluded.

DEPUTY PRESIDENT

Printed by authority of the Commonwealth Government Printer

<PR710563>