



DECISION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards

(AM2019/17)

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER BISSETT

MELBOURNE, 10 SEPTEMBER 2020

4 yearly review of modern awards — finalisation of exposure drafts and variation determinations—General Retail Industry Award.

Background

[1] This Full Bench has been constituted to oversee the process for finalising the exposure drafts produced during the 4 yearly review of modern awards (the Review) and the consequent variation of each modern award. For that purpose, the modern awards were divided into 3 Tranches.

[2] In a decision published on 2 September 2019,¹ we outlined the process for finalising the exposure drafts and consequent variations of each award. The awards in each Tranche were set out at Attachment B of that decision.

[3] This decision deals with the finalisation of the *General Retail Award 2010* (the Retail Award).

[4] We issued a decision² on 29 January 2020 (January 2020 Decision) expressing the *provisional* view that the variation of Tranche 3 modern awards, in accordance with the respective draft variation determinations was necessary to achieve the modern awards objective. On the same day exposure drafts and draft variation determinations were published for each of the Tranche 3 awards, including the Retail Award. Interested parties were invited to comment on our *provisional* view and the Tranche 3 exposure drafts and draft variation determinations.

¹ [\[2019\] FWCFB 6077](#).

² [\[2020\] FWCFB 421](#).

[5] In a further decision³ issued on 27 April 2020 (April 2020 Decision), we set out the next steps for dealing with the Tranche 3 awards following the submissions and reply submissions received by interested parties.

[6] We identified 6 awards which were uncontentious.⁴ The variation determinations in respect of these awards were published shortly thereafter.

[7] In the April 2020 Decision, we divided the Tranche 3 awards into five categories and outlined our reasoning for the categorising of such awards.⁵

[8] Variation determinations in respect of the Category 1 awards were published on 30 April 2020 and commenced operation on 18 June 2020.⁶

[9] The Retail Award was allocated to category 2. A revised exposure draft and draft variation determination were published on 30 April 2020 and interested parties were provided with 14 days to comment.

[10] No submissions were received in relation to the Retail Award.

Other amendments to the exposure draft

[11] Since the publication of the draft variation determination, a number of amendments have been made to the final variation determination, these are outlined below.

[12] Amendments have been made to reflect the transitional arrangements in the penalty rates matters. The final variation determination will come into operation on 1 October 2020 as follows:

- The table in clause 22.1(b) has been amended to delete two rows of penalty rates for Monday to Friday evening work which no longer apply (before 1 October 2020) and Sunday work which no longer apply (before 1 July 2020) and to amend the title in the fourth row.⁷
- Clause 25.1(c) has been amended to remove the shiftwork rates for Sunday that applied from 1 July 2019 until 30 June 2020.⁸
- The rates in the tables at B.1.1, B.1.2, B.2.1, B.2.2, B.3.1, B.3.2, B.3.4, B.3.5, B.4.3, B.4.4, B.4.6, B.4.7, B.5.2 and B.5.3 have been updated to reflect the transitional changes in penalty rates.⁹

³ [\[2020\] FWCFB 2124](#).

⁴ [\[2020\] FWCFB 2124](#) at [12]-[13].

⁵ [\[2020\] FWCFB 2124](#) at [567]-[580].

⁶ [\[2020\] FWCFB 2124](#) at [568]-[571].

⁷ [\[2017\] FWCFB 3001](#) at [208]

⁸ [\[2018\] FWCFB 5897](#) at [275]

⁹ [\[2018\] FWCFB 5897](#)

[13] In addition to the penalty rates updates, the following additional changes have been made:

- The rates in the Supported Wage System Schedule at E.4.2 and E.10.3 have been updated following the Annual Wage Review.¹⁰
- The references to the *Miscellaneous Award 2010* in clause 17.7 have been amended to refer to the *Miscellaneous Award 2020*.
- Minor typographical and style errors have been remedied at clauses 1.2, 2, 17.4(b)(i) and 20.2.

[14] We note that the final variation determination does not include Schedule X—Additional measures during the COVID-19 pandemic, which is in the current award, because Schedule X expires on 30 September 2020.¹¹

Review of the Retail Award

[15] The publication of the final variation determination will complete the technical and drafting process for the Retail Award.

[16] The process undertaken during review of the Retail Award is outlined below.

Plain language process

[17] The Retail Award was selected in the first tranche of plain language re-drafting.¹² The first plain language exposure draft of the Retail Award was published on 5 July 2017.

[18] Throughout the plain language process, the following parties made submissions and attended conferences:

- Australian Business Industrial & New South Wales Business Chamber
- Business SA
- Shop, Distributive and Allied Employees Association
- National Retail Association
- Newsagents Association of NSW and the ACT

[19] Conferences were held on 19 September 2017, 26 October 2017, 21 June 2018 and 27 September 2018. A hearing was held on 3 April 2019.

[20] The following decisions were issued during the plain language process:

- [\[2018\] FWCFB 6850](#)

¹⁰ [\[2020\] FWCFB 3500](#) and [PR721324](#)

¹¹ [\[2020\] FWCFB 3933](#) and [PR720632](#)

¹² [\[2016\] FWC 2837](#)

- [\[2019\] FWCFB 276](#)
- [\[2019\] FWCFB 3626](#)

[21] The exposure draft was then referred to this Full Bench for finalisation.

Substantive claims

[22] There is an outstanding substantive matter in relation to the SDA's claim to vary junior rates (AM2017/60) and a statement about the finalisation of that matter will be issued in the coming weeks.

[23] Other substantive claims made by the Australian Retailers Association and the Australian Industry Group were withdrawn.

Next steps

[24] There are no other outstanding technical and drafting matters to be determined in relation to the Retail Award. Accordingly, we confirm our *provisional* view that the variation of the Retail Award in accordance with the draft variation determination is necessary to achieve the modern awards objective. We will now issue a final variation determination. The *General Retail Award 2020* will come into operation on 1 October 2020. In accordance with s.165(3) of the Fair Work Act 2009 the determination does not take effect in relation to a particular employee until the start of the employee's first full pay period that starts on or after 1 October 2020.

PRESIDENT

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