



DECISION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Award stage – *Children’s Services*

Award 2010

(AM2018/18)

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER LEE

MELBOURNE, 28 OCTOBER 2020

4 yearly review of modern awards – Award stage – substantive claims – Children’s Services Award 2010.

[1] On 19 October 2020 we issued a decision¹ and a variation determination² finalising substantive claims to vary the *Children’s Services Award 2010* as part of the 4 yearly review of modern awards (the Review).

[2] On 27 October 2020 we received [correspondence](#) from the Australian Federation of Employers and Industry (AFEI) indicating that the United Workers Union, Community Connections Solution Australia Ltd and the Australian Childcare Alliance Inc, Australian Business Industrial and the New South Wales Business Chamber (collectively, the ECEC Employers) have consented to a revision to the determination we issued on 19 October 2020, in particular to clauses 10.4(d)(iv) and 21.7(b)(iv).

[3] It is our view that the proposed revision to clauses 10.4(d)(iv) and 21.7(b)(iv) adds clarity to the respective clauses and more appropriately gives effect to our decision of 19 October 2020. We propose to make the correction to our earlier determination in the terms proposed by AFEI and consented to by the other parties.

¹ [2020] FWCFB 5531.

² PR723626.

[4] The variation determination we issued on 19 October 2020 has not yet come into effect; it was due to take effect on 1 November 2020. It seems to us that the simplest course is to correct determination PR723626, pursuant to s.602 of the *Fair Work Act 2009*. A copy of the amended determination is attached; it replaces our previous determination PR723626.

PRESIDENT

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DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards (AM2018/18)

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER LEE

MELBOURNE, 28 OCTOBER 2020

*4 yearly review of modern awards – Award stage – Group 4 awards – Children’s Services
Award 2010 – Substantive issues.*

A. Further to the Full Bench decisions issued by the Fair Work Commission on 10 June 2020 [\[\[2020\] FWCFB 3011\]](#), 20 October 2020 [\[\[2020\] FWCFB 5531\]](#) and 28 October 2020 [\[\[2020\] FWCFB 5766\]](#), the above award is varied as follows:

1. By deleting clause 10.4(d) and inserting:

- (d) (i) Changes in the agreed regular pattern of work may only be made by agreement in writing between the employer and employee. Changes in the days to be worked or in starting and/or finishing times (whether on-going or ad hoc) may also be made by agreement in writing. An agreement in writing may be made by any electronic means of communication.
- (ii) Where agreement cannot be reached, the employer may change the days the employee is to work by giving seven days’ notice in advance of the change in accordance with clause 21—Ordinary hours of work and rostering.
- (iii) The employer is not required to provide the full 7 days’ notice of change of the days an employee is to work where the employer makes the change as a result of an emergency outside of the employer’s control.
- (iv) For the purposes of clause 10.4d(iii), the overtime provisions in clause 23.2(b) apply.
- (v) In clause 10.4(d)(iii), *emergency* means:

- a situation or event that poses an imminent or severe risk to the persons at an education and care service premises (for example, a fire at the education and care services premises); or
- a situation that requires the education and care service premises to be locked-down (for example, an emergency government direction).

2. By deleting clause 15.2(c) and inserting the following:

- (c) Where an employee is required to wear protective clothing or equipment such as hats and sunscreen lotion, goggles, aprons or gloves, the employer will either supply such clothing or equipment or reimburse the employee for the cost of their purchase. Reimbursement will be limited to reasonable costs incurred.

3. By deleting clause 21.5(a) and inserting the following:

- (a) An employee responsible for the preparation, implementation and/or evaluation of a developmental program for an individual child or group of children will be entitled to a minimum of two hours non-contact time per week. During non-contact time, an employee will not be required to supervise children or perform other duties as directed by the employer.
- (b) An employee appointed as the Educational Leader will be entitled to a minimum of two hours non-contact time per week. During non-contact time, an employee will not be required to supervise children or perform other duties as directed by the employer.

NOTE 1: Educational leader is defined in Regulation 118 of the *Education and Care Services National Regulations* (2011).

NOTE 2: The entitlements at clauses 21.5(a) and 21.5(b) are cumulative. An Educational Leader who also has programming responsibilities for an individual child or group of children will be entitled to a minimum of four hours non-contact time per week.

4. By renumbering clause 21.5(b) as clause 21.5(c).

5. By deleting clause 21.7(b) and inserting:

- (b) (i) An employer may change an employee's rostered hours, but only by giving the employee seven days' notice. In the absence of such notice overtime will be paid until seven days have elapsed from the date the notice was given. However, an employee and employer may agree to waive or shorten this notice period in a particular case. Such agreement may be made by electronic means of communication and must be recorded in the time and wages records.

- (ii) The employer is also not required to provide the full 7 days' notice where the employer makes the change as a result of an emergency outside of the employer's control.
- (iii) It is not an emergency for the purposes of clause 21.7(b) (ii) if an employee is required to stay beyond their rostered hours because a parent fails to arrive on time to collect a child.
- (iv) For the purposes of clause 21.7(b)(ii), the overtime provisions in clause 23.2(b) apply.
- (v) In clause 21.7(b)(ii), emergency means:
 - a situation or event that poses an imminent or severe risk to the persons at an education and care service premises (for example, a fire at the education and care services premises);
or
 - a situation that requires the education and care service premises to be locked-down (for example, an emergency government direction).

B. This determination comes into operation from 1 November 2020. In accordance with s.165(3) of the *Fair Work Act 2009* this 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 November 2020.

PRESIDENT