



24 March 2017

The Associate to Hon Justice Iain Ross AO
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000

By email: amod@fwc.gov.au

Dear Associate,

Modern Award Review Full Bench Decision [2017] FWCFB 1001 – Penalty Rates Decision

I refer to the decision of the Full Bench of the Fair Work Commission in [2017] FWBC 1001 (**Penalty Rates Decision**), which provided an opportunity for interested parties to respond on the form of the transitional arrangements for the variation of Sunday penalty rates in some modern awards.

The Fair Work Ombudsman (**FWO**) provides a response in respect of the timing of any changes arising from the Penalty Rates Decision, so that it can carry out its statutory functions under section 681 of the *Fair Work Act*, which include (amongst others):

- (a) assisting employers and employees to understand their rights and obligations;
- (b) providing advice and disseminating information;
- (c) investigating complaints; and
- (d) promoting and monitoring compliance with Commonwealth workplace laws.

At paragraph 2021(iii) of the Penalty Rates Decision, the Full Bench expressed a provisional view that the reduction in Sunday penalty rates in the relevant modern awards “*should take place in a series of annual adjustments on 1 July each year (commencing 1 July 2017) to coincide with any increases in modern award minimum wages arising from Annual Wage Review decisions*”.

In accordance with its functions to educate, inform and assist the public, the FWO agrees with the provisional view that it would assist if changes to Sunday penalty rates were given a universal start date for all awards. It would also assist if changes to Sunday penalty rates were implemented to coincide with adjustments to modern award minimum wages which take effect on 1 July each year. This would mean that the FWO would be able to proactively alert businesses as to the changes when they are interacting with the Agency in respect of minimum wages increases.

At paragraph 2021(ii) of the Penalty Rates Decision, the Full Bench expressed a provisional view that it does not favour “any general ‘red circling’ term which would preserve the current Sunday penalty rates for all existing employees.” The FWO agrees with the Fair Work Commission’s provisional view.

Finally, the timeframe required for the FWO to provide resources and tools to guide and assist the public in implementing the Penalty Rates Decision will depend on future decisions made by the Fair Work Commission. Simply put, the more complex the transition or phasing arrangements are, the longer the time necessary to update the online Pay Tools to make them available for the community.

If you require any further information in relation to this correspondence, please contact me.

Yours sincerely,



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