



REPORT TO FULL BENCH

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

4 yearly review of modern awards (AM2019/17)

COMMISSIONER BISSETT

MELBOURNE, 3 JUNE 2020

4 yearly review of modern awards – finalisation of Exposure Drafts and draft variation determinations – Tranche 3 awards – Wine Industry Award 2010.

[1] On Monday 27 April 2020 the Full Bench issued a decision¹ (*April Decision*) with respect to the finalisation of exposure drafts for tranche 3 awards. Since that time a number of exposure drafts have been reissued in accordance with the decision with the revised Exposure Draft for the *Wine Industry Award 2010* published on 8 May 2020.

[2] In the *April Decision* the Full Bench indicated that a conference would be convened to discuss matters raised in the decision, in particular:

- Clause 22.1(c) – Overtime for casual employees (at [542]-[554]);
- Any other outstanding matters arising from the *April Decision* or the revised Exposure Draft.

[3] A conference of interested parties was convened on Tuesday 2 June 2020.

[4] The only outstanding issue identified by the parties was in relation to clause 22.1(c). In the *April Decision* we said:

[542] Clause 22.1(c) provides:

- (c) A casual employee must be paid overtime rates in accordance with clause 22.2—Overtime rates for all time worked:
 - (i) outside of the spread of ordinary hours in clause 13.6; and/or
 - (ii) in excess of 38 ordinary hours per week; and/or
 - (iii) in excess of the ordinary hours provided for in clause 13—Ordinary hours of work and rostering.

¹ [2020] FWCFB 2124.

[543] The comparable provision in the current award is clause 13.4(a) which states:

13.4 Overtime

- (a) A casual employee must be paid overtime rates in accordance with clause 30—Overtime and penalty rates for all time worked:
 - (i) outside of the spread of ordinary hours; and/or
 - (ii) in excess of 38 ordinary hours per week; and/or
 - (iii) in excess of the ordinary hours provided for in clause 28— Ordinary hours of work and rostering.

[544] The Association submits:

‘The wording in the exposure clause is tighter than in the existing clause, which reads that overtime would apply to any hours worked outside of day work hours. This could be incorrectly interpreted to mean that any hours, including shiftwork ordinary hours, would attract overtime rates. Remove ‘in clause 13.6’. This would allow for shift work and associated shift penalty rates to be paid.’

[5] The *April Decision* indicated that the proposed amendment to the clause was not supported by the United Workers’ Union (UWU).

[6] At the conference held on 2 June 2020 the UWU and The Australian Workers’ Union (AWU) withdrew their objection to the change proposed to clause 22.1(c)(i).

[7] It is therefore agreed that the words “in clause 13.6” be deleted from clause 22.1(c) – Overtime for casual employees in the Exposure Draft.

[8] There are no further outstanding matters in relation to the Exposure Draft for the Wine Industry Award 2010.



COMMISSIONER

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