



STATEMENT

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 yearly review of modern awards – Award flexibility (AM2014/300)

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT KOVACIC
COMMISSIONER LEE

MELBOURNE, 15 JUNE 2016

4 yearly review of modern awards – common issue – award flexibility – time off in lieu of payment for overtime – Resource Industry and Maritime modern awards

[1] The purpose of this Statement is to advise how the Full Bench proposes to deal with the inclusion of the model time off instead of payment for overtime provision (the model term) in the Resource Industry and Maritime modern awards listed in paragraph [2] below.

[2] On 4 December 2015 the Full Bench issued a Statement¹ referring the following awards to Deputy President Kovacic for conference.

Resource Industry modern awards

- *Hydrocarbons Industry (Upstream) Award 2010*
- *Mining Industry Award 2010*
- *Oil Refining and Manufacturing Award 2010*
- *Salt Industry Award 2010*

Maritime modern Awards

- *Marine Towage Award 2010*
- *Ports, Harbours and Enclosed Water Vessels Award 2010*
- *Professional Diving Industry (Industrial) Award 2010*
- *Dredging Industry Award 2010*

[3] The Deputy President convened conferences of the parties on 1 March and 25 May 2016. Arising from those conferences it is clear that there is no agreement regarding the inclusion of the model term in the Resource Industry modern awards listed above. The Australian Mines and Metals Association (AMMA) submitted that the current provisions in the Resource Industry modern awards should remain unaltered. The Australian Workers' Union (AWU) stated that there were no industry specific reasons for not including the model term in those awards. The Australian Manufacturing Workers' Union (AMWU) endorsed the AWU's view.

[4] As to the Maritime modern awards, Maritime Industry Australia Limited (MIAL), AMMA, the Maritime Union of Australia (MUA) and the AWU agree that the model term should not be inserted in those awards. At the conference of 25 May 2016, the Deputy President highlighted that the *Ports, Harbours and Enclosed Water Vessels Award 2010* currently includes a provision dealing with time off instead of overtime and inquired as to why in those circumstances it should not be replaced by the model term determined by the Full Bench. In short, both MIAL and the MUA contended that the existing award provision was operating effectively, with the MIAL also contending that the model term carried with it an additional regulatory burden which was not necessary in this case.

[5] Against this background we invite interested parties to make any further submissions on the above awards by **4pm on Thursday 30 June 2016** and indicate whether they wish to be heard on their submissions. Submissions are to be sent to AMOD@fwc.gov.au. In the absence of any further submissions, the Full Bench will determine the matter based on the material before it.

PRESIDENT

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¹ [2015] FWCFB 8412