



DRAFT DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—Annualised Wage Arrangements (AM2016/13)

OIL REFINING AND MANUFACTURING AWARD 2010 [MA000072]

Oil and gas industry

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
DEPUTY PRESIDENT SAUNDERS

SYDNEY, XX FEBRUARY 2020

Review of annualised salary provisions in modern awards - Oil Refining and Manufacturing Award 2010.

A. Further to the Full Bench decisions [\[2019\] FWCFB 4368](#) and [\[2019\] FWCFB 8583](#) issued by the Fair Work Commission, the above award is varied as follows:

1. By deleting clause 20 and inserting the following:

20. Annualised wage arrangements—non-clerical

20.1 Clause 20 applies to all employees other than those engaged in a clerical classification.

20.2 Annualised wage instead of award provisions

(a) An employer and a full-time employee may enter into a written agreement for the employee to be paid an annualised wage in satisfaction, subject to clause 20.2(c), of any or all of the following provisions of the award:

- (i) clause 14—Minimum wages;
- (ii) clause 15—Allowances;
- (iii) clause 24—Overtime penalty rates; and
- (iv) clause 26.4(b)—Annual leave loading.

- (b) Where a written agreement for an annualised wage agreement is entered into, the agreement must specify:
 - (i) the annualised wage that is payable;
 - (ii) which of the provisions of this award will be satisfied by payment of the annualised wage;
 - (iii) the method by which the annualised wage has been calculated, including specification of each separate component of the annualised wage and any overtime or penalty assumptions used in the calculation; and
 - (iv) the outer limit number of ordinary hours which would attract the payment of a penalty rate under the award and the outer limit number of overtime hours which the employee may be required to work in a pay period or roster cycle without being entitled to an amount in excess of the annualised wage in accordance with clause 20.2(c).
- (c) If in a pay period or roster cycle an employee works any hours in excess of either of the outer limit amounts specified in the agreement pursuant to clause 20.2(b)(iv), such hours will not be covered by the annualised wage and must separately be paid for in accordance with the applicable provisions of this award.
- (d) The employer must give the employee a copy of the agreement and keep the agreement as a time and wages record.
- (e) The agreement may be terminated:
 - (i) by the employer or the employee giving 12 months' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (ii) at any time, by written agreement between the employer and the individual employee.

20.3 Annualised wage not to disadvantage employees

- (a) The annualised wage must be no less than the amount the employee would have received under this award for the work performed over the year for which the wage is paid (or if the employment ceases or the agreement terminates earlier, over such lesser period as has been worked).
- (b) The employer must each 12 months from the commencement of the annualised wage arrangement or, within any 12 month period upon the termination of employment of the employee or termination of the agreement, calculate the amount of remuneration that would have been payable to the employee under the provisions of this award over the relevant period and compare it to the amount of the annualised wage actually paid to the employee. Where the latter

amount is less than the former amount, the employer shall pay the employee the amount of the shortfall within 14 days.

- (c) The employer must keep a record of the starting and finishing times of work, and any unpaid breaks taken, of each employee subject to an annualised wage arrangement agreement for the purpose of undertaking the comparison required by clause 20.3(b). This record must be signed by the employee, or acknowledged as correct in writing (including by electronic means) by the employee, each pay period or roster cycle.

20.4 Base rate of pay for employees on annualised wage arrangements

For the purposes of the NES, the base rate of pay of an employee receiving an annualised wage under this clause comprises the portion of the annualised wage equivalent to the relevant rate of pay in clause 14—Minimum wages and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.

- 2. By inserting clause 20A as follows:

20A. Annualised wage arrangements—Clerical

20A.1 Clause 20A applies to all employees engaged in a clerical classification.

20A.2 Annualised wage instead of award provisions

- (a) An employer may pay a full-time employee an annualised wage in satisfaction, subject to clause 20A.2(c), of any or all of the following provisions of the award:
 - (i) clause 14—Minimum wages;
 - (ii) clause 15—Allowances;
 - (iii) clause 24—Overtime and penalty rates; and
 - (iv) clause 26.4—Annual leave loading.
- (b) Where an annualised wage is paid the employer must advise the employee in writing, and keep a record of:
 - (i) the annualised wage that is payable;
 - (ii) which of the provisions of this award will be satisfied by payment of the annualised wage;
 - (iii) the method by which the annualised wage has been calculated, including specification of each separate component of the annualised wage and any overtime or penalty assumptions used in the calculation; and

- (iv) the outer limit number of ordinary hours which would attract the payment of a penalty rate under the award and the outer limit number of overtime hours which the employee may be required to work in a pay period or roster cycle without being entitled to an amount in excess of the annualised wage in accordance with clause 20A.2(c).
- (c) If in a pay period or roster cycle an employee works any hours in excess of either of the outer limit amounts specified pursuant to clause 20A.2(b)(iv), such hours will not be covered by the annualised wage and must separately be paid for in accordance with the applicable provisions of this award.

20A.3 Annualised wage not to disadvantage employees

- (a) The annualised wage must be no less than the amount the employee would have received under this award for the work performed over the year for which the wage is paid (or if the employment ceases earlier over such lesser period as has been worked).
- (b) The employer must each 12 months from the commencement of the annualised wage arrangement or upon the termination of employment of the employee calculate the amount of remuneration that would have been payable to the employee under the provisions of this award over the relevant period and compare it to the amount of the annualised wage actually paid to the employee. Where the latter amount is less than the former amount, the employer shall pay the employee the amount of the shortfall within 14 days.
- (c) The employer must keep a record of the starting and finishing times of work, and any unpaid breaks taken, of each employee subject to an annualised wage arrangement for the purpose of undertaking the comparison required by clause 20A.3(b). This record must be signed by the employee, or acknowledged as correct in writing (including by electronic means) by the employee, each pay period or roster cycle.

20A.4 Base rate of pay for employees on annualised wage arrangements

For the purposes of the NES, the base rate of pay of an employee receiving an annualised wage under this clause comprises the portion of the annualised wage equivalent to the relevant rate of pay in clause 14—Minimum wages and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.

3. By deleting the words “annualised salaried” and “annualised salary” wherever they appear in Schedule F—Part-day Public Holidays and inserting “annualised wage arrangement”.

4. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation from 1 March 2020. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period that starts on or after 1 March 2020.

VICE PRESIDENT

Printed by authority of the Commonwealth Government Printer