



# DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards—Casual employment and Part-time employment**

(AM2014/196 and AM2014/197)

### **REGISTERED AND LICENSED CLUBS AWARD 2010**

[MA000058]

Licensed and registered clubs industry

VICE PRESIDENT HATCHER  
SENIOR DEPUTY PRESIDENT HAMBERGER  
DEPUTY PRESIDENT KOVACIC  
DEPUTY PRESIDENT BULL

SYDNEY, 12 DECEMBER 2017

*4 yearly review of modern awards – Part-time employment and Casual employment – Registered and Licensed Clubs Award 2010.*

A. Further to the decision issued on 5 July 2017 in AM2014/196 and AM2014/197 ([\[2017\] FWCFB 3541](#)), it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009* that the *Registered and Licensed Clubs Award 2010* be varied as follows:

1. By deleting clause 10.4 and inserting the following:

#### **10.4 Part-time employees**

- (a) An employer may employ part-time employees in any classification in this award.
- (b) A part-time employee is an employee who is employed in a classification in **Schedule C—Classification Definitions** and who:
  - (i) is engaged to work at least 8 and less than 38 ordinary hours per week or, where the employer operates a roster, an average of at least 8 and fewer than 38 hours per week over the roster cycle;
  - (ii) has reasonably predictable hours of work; and
  - (iii) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

- (c) At the time of engagement the employer and the part-time employee will agree in writing upon:
  - (i) the number of hours of work which is guaranteed to be provided and paid to the employee each week or, where the employer operates a roster, the number of hours of work which is guaranteed to be provided and paid to the employee over the roster cycle (**the guaranteed hours**); and
  - (ii) the days of the week, and the periods in each of those days, when the employee will available to work the guaranteed hours (**the employee's availability**).
- (d) Any change to the guaranteed hours may only occur with the written consent of the employee.
- (e) The employer may roster the working of the employee's guaranteed hours and any additional hours in accordance with **clause 25—Roster**, provided that:
  - (i) the employee may not be rostered for work for any hours outside the employee's availability;
  - (ii) the employee must not be rostered to work in excess of 12 or less than 3 hours in a day; and
  - (iii) the employee must have two days off each week.
- (f) Where a part-time employee has over a period of at least 12 months regularly worked a number of ordinary hours that is in excess of the guaranteed hours, the employee may request in writing that the employer agree to increase the guaranteed hours. If the employer agrees to the request, the new agreement concerning guaranteed hours shall be recorded in writing. The employer may refuse the request only upon reasonable business grounds, and such refusal must be provided to the employee in writing and specify the grounds for refusal.
- (g) Where there has been a genuine and ongoing change in the employee's personal circumstances, the employee may alter the days and hours of the employee's availability on 14 days' written notice to the employer. If the alteration to the employee's availability cannot reasonably be accommodated by the employer within the guaranteed hours then, despite clause 10.4(d), those guaranteed hours will no longer apply and the employer and the employee will need to reach a new agreement in writing concerning guaranteed hours in accordance with clause 10.4(c).
- (h) All time worked in excess of:
  - (i) 38 hours per week or, where the employee works in accordance with a roster, an average of 38 hours per week over the roster cycle; or
  - (ii) the employee's rostered hours;

will be overtime and paid for at the rates prescribed in **clause 28.3**.

- (i) An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 10.5.
- (j) A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.
- (k) A part-time employee who immediately prior to 1 January 2018 has a written agreement with their employer for a regular pattern of hours is entitled to continue to be rostered in accordance with that agreement, unless that agreement is replaced by a new written agreement made in accordance with clause 10.4(c).

2 By inserting a new clause 10.5(e) as follows:

- (e) A casual employee shall be paid at the overtime rates specified in clause 28.3 for any work in excess of:
  - (i) 12 hours per day or per shift;
  - (ii) in excess of 38 hours per week or, where the employee works in accordance with a roster, an average of 38 hours per week over the roster cycle (which may not exceed 4 weeks).

3. By deleting clauses 28 and inserting the following:

## **28. Overtime**

**28.1** An employer may require an employee to work reasonable overtime at overtime rates.

**28.2** All time worked by a full-time employee in excess of the hours and/or outside the spread of hours or outside the rostered hours prescribed in this award will be overtime and will be paid for at the overtime rates specified in clause 28.3.

**28.3** The following overtime rates are payable to an employee, depending on the time at which the overtime is worked:

- (a) Monday to Friday inclusive - 150% for the first two hours and 200% for all work thereafter;
- (b) between midnight Friday and midnight Saturday - 175% for the first two hours and 200% for all work thereafter;
- (c) between midnight Saturday and midnight Sunday - 200% for all time worked;

- (d) all work performed on a public holiday - 250% for all time worked, with a minimum payment of four hours at the rate of 250%;
- (e) all work performed on a rostered day off to which an employee is entitled - 200%, with a minimum payment of four hours at the rate of 200%.

**28.4** Overtime on any day will stand alone.

**28.5** If an employee is so long on overtime duty that the employee has not had 10 hours' rest before the employee's next regular starting time, the employee will be allowed at least 10 hours' rest without deduction of pay or will be paid at overtime rates for all time of duty until the employee has had at least eight hours' rest.

**28.6 Time off instead of payment for overtime**

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) The period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made.

EXAMPLE: By making an agreement under clause 28.5 an employee who worked 2 overtime hours at the rate of time and a half is entitled to 3 hours' time off.

- (c) Time off must be taken:
  - (i) within the period of 6 months after the overtime is worked; and
  - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (d) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 28.5 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (e) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (c), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (f) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (g) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the

employee. If the employer agrees to the request then clause 0 will apply for overtime that has been worked.

Note: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act).

- (h) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 28.5 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 28.5.

**28.7** An apprentice under the age of 18 years will not, without the employee's consent, be required to work overtime, shiftwork or late work.

**28.8** An employee required to work overtime for more than two hours without being notified on the previous day or earlier that they will be so required to work will be either supplied with a meal by the employer or be paid the allowance prescribed in clause 18.1(a)(i).

B. This determination comes into force on and from 1 January 2018. 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 January 2018.

## VICE PRESIDENT

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