



# DETERMINATION

*Fair Work Act 2009*

s.156 – 4 yearly review of modern awards

## **4 yearly review of modern awards – plain language re-drafting – reasonable overtime**

(AM2016/15)

### **BUILDING AND CONSTRUCTION GENERAL ON-SITE AWARD 2010**

[\[MA000020\]](#)

Building, metal and civil construction industries

JUSTICE ROSS, PRESIDENT  
VICE PRESIDENT HATCHER  
COMMISSIONER HUNT

MELBOURNE, 20 AUGUST 2019

*4 yearly review of modern awards – plain language re-drafting – reasonable overtime model term – Building and Construction General On-site Award 2010*

A. Further to the Full Bench decisions issued by the Fair Work Commission on 29 October 2018 [[\[2018\] FWCFB 6680](#)] and 20 August 2019 [[\[2019\] FWCFB 5409](#)] the above award is varied as follows:

1. By deleting clause 36.1 and inserting the following:

#### **36.1 Reasonable overtime**

- (a) Subject to s.62 of the Act and this clause, an employer may require an employee to work reasonable overtime hours at overtime rates.
- (b) An employee may refuse to work overtime hours if they are unreasonable.
- (c) In determining whether overtime hours are reasonable or unreasonable for the purpose of this clause the following must be taken into account:
  - (i) any risk to employee health and safety from working the additional hours;
  - (ii) the employee's personal circumstances, including family responsibilities;

- (iii) the needs of the workplace or enterprise in which the employee is employed;
- (iv) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;
- (v) any notice given by the employer of any request or requirement to work the additional hours;
- (vi) any notice given by the employee of his or her intention to refuse to work the additional hours;
- (vii) the usual patterns of work in the industry, or the part of an industry, in which the employee works;
- (viii) the nature of the employee's role, and the employee's level of responsibility; and
- (ix) any other relevant matter.

B. This determination comes into operation from 30 August 2019. In accordance with s.165(3) of the Fair Work Act 2009 this determination does not take effect until the start of the first full pay period that starts on or after 30 August 2019.

PRESIDENT