



# DECISION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Family Friendly Work Arrangements** (AM2015/2)

JUSTICE ROSS, PRESIDENT  
VICE PRESIDENT HATCHER  
COMMISSIONER SPENCER

MELBOURNE, 20 NOVEMBER 2018

*4 yearly review of modern awards – family friendly work arrangements common issue – requests for flexible working arrangements model term.*

[1] This decision finalises the model term for requests for flexible working arrangements. The model term will be inserted into all modern awards as part of the 4 yearly review of modern awards (the Review).

[2] The model term was published in a decision issued on 25 September 2018 (the *September 2018 decision*).<sup>1</sup> We expressed the *provisional* view that all modern awards should be varied to include the model term. This provisional view would only be displaced in respect of any particular award if it was demonstrated that matters or circumstances particular to that award exist which compel the conclusion that the achievement of the modern awards objective for that award does not necessitate the inclusion of the model term.<sup>2</sup>

[3] In accordance with the *September 2018 decision*, 122 draft determinations were published on 25 October 2018 to give effect to our provisional view.<sup>3</sup> Minor formatting and technical amendments were made in order to make the clause consistent with modern award styles.<sup>4</sup> The reformatted model term is also set out at Attachment A to this decision. Parties were provided 14 days from the date of publication of draft determinations to comment on the determinations as to whether any award-specific issues were being pressed.<sup>5</sup>

[4] We received submissions from the following organisations:

- The Pharmacy Guild of Australia (the Guild)
- CFMMEU – Maritime Union of Australia Division (the MUA)

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<sup>1</sup> [\[2018\] FWCFB 5753](#) at para 64

<sup>2</sup> [\[2018\] FWCFB 5753](#) at para 87

<sup>3</sup> [Schedule of draft determinations](#)

<sup>4</sup> [Schedule of draft determinations](#)

<sup>5</sup> [\[2018\] FWCFB 5753](#) at 89

[5] The CFMMEU supports the Full Bench making determinations in the terms published on 25 October 2018 in relation to each of the following awards;

1. *Dredging Industry Award 2010*;
2. *Marine Tourism and Charter Vessels Award 2010*;
3. *Marine Towage Award 2010*;
4. *Maritime Offshore Oil and Gas Award 2010*;
5. *Port Authorities Award 2010*;
6. *Ports, Harbours and Enclosed Water Vessels Award 2010*;
7. *Professional Diving Industry (Industrial) Award 2010*;
8. *Professional Diving Industry (Recreational) Award 2010*;
9. *Seagoing Industry Award 2010*; and
10. *Stevedoring Industry Award 2010*

[6] The Guild does not oppose the draft determination inclusion in the *Pharmacy Industry Award 2010*.

[7] We received no further submissions.

[8] We confirm our *provisional* view and will vary all modern awards to include the model term. The clause will come into effect on 1 December 2018. Determinations to give effect to this will be published shortly.

## PRESIDENT

*Final written submissions:*

Pharmacy Guild, 8 November 2018  
CFMMEU, 8 November 2018

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## **Attachment A**

### **XA. Requests for flexible working arrangements**

#### **XA.1 Employee may request change in working arrangements**

Clause XA applies where an employee has made a request for a change in working arrangements under s.65 of the [Act](#).

Note 1: Section 65 of the [Act](#) provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in s.65(1A).

Note 2: An employer may only refuse a s.65 request for a change in working arrangements on 'reasonable business grounds' (see s.65(5) and (5A)).

Note 3: Clause XA is an addition to s.65.

#### **XA.2 Responding to the request**

Before responding to a request made under s.65, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to:

- (a) the needs of the employee arising from their circumstances;
- (b) the consequences for the employee if changes in working arrangements are not made; and
- (c) any reasonable business grounds for refusing the request.

Note 1: The employer must give the employee a written response to an employee's s.65 request within 21 days, stating whether the employer grants or refuses the request (s.65(4)).

Note 2: If the employer refuses the request, the written response must include details of the reasons for the refusal (s.65(6)).

#### **XA.3 What the written response must include if the employer refuses the request**

Clause XA.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause XA.2.

- (a) The written response under s.65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
- (b) If the employer and employee could not agree on a change in working arrangements under clause XA.2, the written response under s.65(4) must:

- (i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and
- (ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

**XA.4 What the written response must include if a different change in working arrangements is agreed**

If the employer and the employee reached an agreement under clause XA.2 on a change in working arrangements that differs from that initially requested by the employee, the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

**XA.5 Dispute resolution**

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause XA, can be dealt with under clause Y—Dispute Resolution.