



STATEMENT

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 yearly review of modern awards—award stage (AM2014/1)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 13 FEBRUARY 2019

4 yearly review of modern awards – award stage – technical and drafting issues – status report – finalisation of exposure drafts – timeline.

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1. Introduction

[1] Since January 2014, the Commission has been conducting a 4 yearly review of all modern awards in accordance with s.156 of the *Fair Work Act* (2009) (the FW Act).¹ The Review has been conducted in three stages—an initial stage to deal with any jurisdictional issues, an award stage where each award is being reviewed in its own right and a common issues stage where claims that affect all or a number of awards are dealt with by a dedicated Full Bench.

[2] This Statement provides an overview of the status of the award stage of the 4 yearly Review of modern awards (the Review) and provides a timeline for the finalisation of exposure drafts.

[3] In the coming weeks I will publish a statement dealing with the plain language project, which will detail all matters referred to that Full Bench and provide an outline of a process for finalising those matters.

[4] The Commission has now determined all technical and drafting issues relating to the majority of awards in Groups 1 – 4. Exposure drafts in all groups have been updated in accordance with a number of recent technical and drafting decisions, along with a number of common issue decisions. Exposure drafts in Groups 1 – 4 will be republished over the coming weeks and interested parties will be provided an opportunity to comment on the updated exposure drafts.

[5] A timeline for the publication of these documents and submission deadlines for interested parties is set out at below. The timeline sets out dates for the republication and finalisation of exposure drafts throughout 2019. Parties will be provided an opportunity to comment on updated exposure drafts three times throughout 2019, prior to the exposure drafts being finalised in October 2019. These three updates are as follows:

- **Update 1:** An update incorporating changes resulting from:

- (a) recent technical and drafting decisions for each group (1–4) of the award stage;

- (b) recent common issues and plain language decisions including payment of wages on termination, standard clauses, National Training Wage, family and domestic violence leave, flexible working arrangements, part-day public holidays, casual conversion, minimum engagement and abandonment of employment; and

- (c) adjustments to rates and allowances resulting from the *2017-18 Annual Wage Review decision* and any award variations operative since the last update.

- **Update 2*:** A further update incorporating changes resulting from parties submissions regarding update 1 and the plain language ‘light touch’ process, which

¹ Section 156 of the FW Act was repealed by the *Fair Work Amendment (Repeal of 4 Yearly Review and Other Measures) Act 2018 (Cth)*. Clause 26 of Schedule 4 of the Amendment Act sets out the requirement to review a modern award continues to apply where the review commenced, and was not completed, before 1 January 2018.

will include structural changes to exposure drafts in groups 1-3 (these structural changes have already been made to exposure drafts in group 4).²

- **Update 3***: A further update incorporating adjustments to rates and allowances resulting from the *2018-19 Annual Wage Review decision* and any changes resulting from parties submissions regarding update 2.

*These updates will also incorporate any changes resulting from substantive claims heard by separate full benches, outstanding common issues or any other matters that may be determined in the timeframe.

[6] The timeline for publishing exposure drafts for 2019 is as follows:

	Date	Event
Groups 1 – 2	13 February 2019	Exposure drafts for Group 1 to be updated and republished
	15 February 2019	Exposure drafts for Group 2 to be updated and republished
	13 March 2019	Parties to comment on updated Group 1 exposure drafts
	15 March 2019	Parties to comment on updated Group 2 exposure drafts
	May 2019	Exposure drafts to be updated and republished with ‘plain language light touch’
	June 2019	Parties to comment on updated ‘plain language light touch’ exposure drafts
	August 2019	Exposure drafts to be republished incorporating adjusted rates and allowances as a result of the <i>2018-19 Annual Wage Review decision</i>
	September 2019	Parties to comment on updated rates in exposure drafts
	October 2019	Exposure draft to be issued as new consolidated award
	Groups 3 – 4	1 March 2019
8 March 2019		Exposure drafts for Group 4 to be updated and republished
29 March 2019		Parties to comment on updated Group 3 exposure drafts
5 April 2019		Parties to comment on updated Group 4 exposure drafts
May 2019		Exposure draft to be updated and republished with ‘plain language light touch’
June 2019		Parties to comment on updated ‘plain language light touch’ exposure drafts
August 2019		Exposure drafts to be republished incorporating adjusted rates and allowances as a result of the <i>2018-19 Annual Wage Review decision</i>
September 2019		Parties to comment on updated rates in exposure drafts
October 2019		Exposure draft to be issued as new consolidated award

² A separate Statement relating to the plain language project will be issued shortly.

[7] A small number of award specific technical and drafting issues remain outstanding in some exposure drafts. These outstanding issues are dealt with later in this Statement. Specific clauses in exposure drafts that relate to any outstanding issues (including those that are the subject of substantive claims) will be quarantined and a note inserted into the relevant clause of the exposure drafts during the publication process in 2019. Any outstanding substantive claims that have not been determined when the exposure drafts become new modern awards will be incorporated by way of a subsequent variation determination.

[8] Before dealing with the status of each group in the award stage, it is important to provide a background of the Review and a summary of all technical and drafting matters determined during since the commencement of the Review in 2014.

2. Background

[9] As noted earlier, the Review has been conducted in three stages—an initial stage, an award stage and a common issues stage. The award stage and the common issues stage have run in parallel, in addition to dealing with claims to make substantive changes to award provisions. Claims to make substantive changes have been dealt with by separate Full Benches, and there has been a separate Full Bench constituted to hear and determine each common issue. There has also been a core Full Bench established to hear and determine technical and drafting matters arising from the review of each group of individual awards in the award stage.

Initial stage proceedings

[10] During the initial stage proceedings a Full Bench issued a decision dealing with preliminary jurisdictional issues.³ In that decision the scope of the Review was determined and the Full Bench made a number of observations regarding the Review and the Commission's discretion under s.156 of the FW Act.⁴

Common Issues

[11] The following matters were identified as common issues at the commencement of the Review (during a conference held on 26 February 2014):

- annual leave ([AM2014/47](#))
- award flexibility/facilitative provisions including time off instead of payment for overtime (TOIL) ([AM2014/300](#))
- casual employment ([AM2014/197](#))
- family and domestic violence clause ([AM2015/1](#))
- family friendly work arrangements ([AM2015/2](#))
- micro business schedule ([AM2014/306](#))⁵
- part-time employment ([AM2014/196](#))
- public holidays ([AM2014/301](#))

³ [\[2014\] FWCFB 1788](#)

⁴ [\[2014\] FWCFB 1788](#) at [60]

⁵ The application for a micro-business schedule was withdrawn by ABI on [12 October 2016](#)

- transitional/sunset provisions relating to accident pay, redundancy and district allowances ([AM2014/190](#)) (Note: Other transitional or sunset provisions in modern awards will be dealt with during the award phase of the Review).

[12] As the Review progressed the Commission grouped together a number of further ‘applications’ into common issue matters in order to deal with them more efficiently. The additional common issues are:

- abandonment of employment ([AM2016/35](#))
- annualised salaries ([AM2016/13](#))
- blood donor leave ([AM2016/36](#))
- National Training Wage ([AM2016/17](#))
- payment of wages ([AM2016/8](#))
- training costs ([AM2016/14](#))
- overtime entitlement for casual employees ([AM2017/51](#))

[13] When a Full Bench determined a common issue, the decision has generally flowed on to all or a substantial number of modern awards (regardless of the number of awards included in the original application⁶). As at 13 February 2018, there remain 5 common issue matters left to be determined. The remaining common issues are Casual Employment ([AM2014/197](#)), Part-Time Employment ([AM2014/196](#)), Annualised Salaries ([AM2016/13](#)), Overtime for Casuels ([AM2017/51](#)), and Payment of Wages ([AM2016/8](#)).

Award stage

[14] The award stage commenced with the publication of the ‘*Guide to Award Stage*’ in June 2014 which outlined the approach the Commission intended to follow in that stage of the Review and some of the issues to be addressed. It was decided that the 122 modern awards would be divided into four groups for the purpose of scheduling proceedings during the award stage. Lists of the awards by group are set out at Attachment A to this Statement.

Exposure drafts

[15] During the review of each modern award the Commission has published an exposure draft and parties have had the opportunity to make submissions on the structural changes across all awards (and also in the context of a particular award). Comments directed to parties were inserted in a number of exposure drafts by the Commission to highlight any identified ambiguities or inconsistencies in the award. A number of these comments were based on feedback from the Fair Work Ombudsman.

[16] As issues have been resolved through conferences and hearings, exposure drafts have been updated and annotated versions have been published periodically on the Commission’s website.

Substantive claims

⁶ See for example [\[2016\] FWCFB 3177](#) at [140] and [\[2015\] FWCFB 3406](#) at [415]

[17] As previously mentioned, claims to make substantive changes to awards have been dealt with by separate Full Benches. Where an issue is more complex (than a technical or drafting matter) or parties are seeking a substantive change to current entitlements, a Full Bench has been constituted to hear evidence as to why any proposed change is necessary for the award to meet the modern awards objective. There are a number of Full Benches currently hearing matters in which parties are seeking substantive changes to awards. A separate Statement providing an update on the status of these matters has been issued and a timeline for the hearing and determination of these matters has been published.⁷

Applications to make new modern awards

[18] Under s.156(2)(b)(ii) the Commission may make new modern awards as an outcome of the Review. During the award stage of the review three applications have been made to create new modern awards – one in the traffic management industry⁸, one for helicopter crews⁹ and one for Norfolk Island.¹⁰ The application in the traffic management industry (AM2014/195) was discontinued, the application for helicopter crews (AM2016/3) is currently being heard and the application related to Norfolk Island (AM2018/8) was dismissed.

3. Award stage

3.1 General technical and drafting issues determined

[19] A number of decisions relating to technical and drafting matters have been issued in the award stage throughout the Review. A complete list of these decisions is set out at Attachment B to this Statement.

[20] After the jurisdictional issues decision, a Full Bench commenced the Award stage by analysing the provisions in all awards to ensure they did not conflict with the National Employment Standards (NES). It was found that a number of awards contained provisions that were inconsistent with sections 59 to 131 of the FW Act and those awards were varied accordingly.

[21] During the review of the first group of awards, a number of threshold issues were raised and determined following an extensive submission process.¹¹ Parties interested in awards in other stages were given an opportunity to participate in these proceedings as any decisions arising from the 11 awards allocated to subgroups 1A and 1B could flow on to the awards in subsequent groups.¹²

[22] The decisions in Group 1 of the award stage in relation to the following issues have generally been applied to awards in subsequent groups unless a case has been made otherwise:

⁷ See [\[2018\] FWC 7869](#) and [\[2019\] FWC 717](#)

⁸ See [AM2014/195](#). Note this application was [discontinued](#) on 23 November 2016

⁹ See [AM2016/3](#). This matter is currently being heard.

¹⁰ See [AM2018/8](#). This matter was dismissed by the Full Bench.

¹¹ [\[2014\] FWC FB 9412](#) 23 December 2014; [\[2015\] FWC FB 4658](#) 13 July 2015; and [\[2015\] FWC FB 6656](#) 30 September 2015

¹² While there are no longer ‘parties’ to an award in the traditional sense, the term has been used to denote those with an interest in one or more awards who have participated in the process.

- changes to the supersession clause 1.2¹³
- inclusion of commencement clause¹⁴
- deletion of absorption clause 1.4¹⁵
- reinstatement of the take home pay clause¹⁶
- changes to NES provisions¹⁷
- removal of summaries of NES entitlements from clauses including various forms of leave, termination of employment, redundancy and proposed provision regarding pay slips¹⁸
- changes to text in facilitative provisions clause¹⁹
- changes to format of rates tables in National Training Wage schedule (where included)²⁰
- inclusion of notes about annual leave, obligations regarding hourly rates in schedules²¹
- standardisation of the use of the terms ‘minimum hourly rate’; ‘ordinary hourly rate’ and ‘all purpose allowance’ plus related definitions²²

[23] Some of the issues listed above were revisited in a subsequent decision regarding technical and drafting issues in the Group 3 awards (*the Group 3 decision*).²³ These changes have been applied to awards in all groups with the exposure drafts prepared in Groups 1, 2, 3 and 4 being varied to incorporate the revisions. Below is a detailed summary of the general technical and drafting issues that have been determined.

(i) Supersession clause and commencement clause

[24] The exposure drafts included a supersession clause which replaced the commencement clause in modern awards and which read:

This award supersedes the [Award Names] but this does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the superseded award.

[25] In the *December 2014 decision*, following submissions from interested parties, the Full Bench determined to make variations to existing modern awards during the Review,

¹³ [\[2014\] FWC 9412](#) at [11]

¹⁴ [\[2015\] FWC 4658](#) at [8]; see also [\[2017\] FWC 3433](#) at [327]

¹⁵ [\[2015\] FWC 6656](#) at [74]

¹⁶ [\[2014\] FWC 9412](#) at [16]

¹⁷ [\[2014\] FWC 9412](#) at [25] and [29]

¹⁸ [\[2014\] FWC 9412](#) at [35]

¹⁹ [\[2014\] FWC 9412](#) at [42]

²⁰ [\[2014\] FWC 9412](#) at [67]

²¹ [\[2015\] FWC 4658](#) at [94] and [63]

²² [\[2015\] FWC 4658](#) at [43], [35] and [91]; see also [\[2017\] FWC 3433](#) at [360]–[361]

²³ [\[2017\] FWC 3433](#)

rather than ‘superseding’ awards.²⁴ The proposed supersession clause will be removed from the exposure drafts, and the following clause inserted:

A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.²⁵

[26] The Full Bench was of the view that the above clause reflects the position at common law and its inclusion will make modern awards simpler and easier to understand.²⁶

[27] In the *July 2015 decision*, the Full Bench observed that the decision to vary modern awards in the Review meant that a commencement provision needed to be reinserted as follows:

‘This modern award, as varied, commenced operation on 1 January 2010.’²⁷

[28] The wording of the commencement clause was reviewed in the *Group 3 decision*. It was considered that the use of the phrase ‘as varied’ may appear to give amendments made after 1 January 2010 retrospective effect. Accordingly the clause has been amended to:

‘This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.’²⁸

(ii) *Take home pay clause*

[29] The ‘commencement and transitional’ clause in all current modern awards includes references to transitional arrangements and provision for take home pay orders. The exposure drafts initially omitted these clauses.

[30] The current take home pay clause provides:

Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of any employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

[31] In the *December 2014 decision*, the Full Bench determined that the take home pay clause would remain in modern awards on an interim basis.²⁹

[32] However, the Full Bench in the *September 2015 decision* found that its conclusion (outlined below) in respect of the absorption clause raises a question as to the appropriateness of retaining the take home pay clause. The Full Bench decided not to determine the issue at

²⁴ [2014] FWCFB 9412 at [7]–[9]

²⁵ *Ibid* at [9]–[10]

²⁶ *Ibid* at [11]

²⁷ [2015] FWCFB 4658 at [8]

²⁸ [2017] FWCFB 3433 at [321]–[328]

²⁹ [2014] FWCFB 9412 at [16]

that time, but instead to revisit the take home pay clause before the conclusion of the Review.³⁰

[33] A Statement relating to this issue was published on 16 October 2018³¹ referring the consideration of this issue to the plain language full bench for determination. Interested parties were provided an opportunity to file written submissions on the issue and the matter is to be determined on the papers.

(iii) Absorption clause

[34] The ‘absorption clause’ in the exposure drafts, is in the same terms as the current clause 2.2 in modern awards and provides:

The monetary obligations imposed on employers by this award may be absorbed into overaward payments. Nothing in this award requires an employer to maintain or increase any overaward payment.³²

[35] The Full Bench in the *September 2015 decision* found that the absorption clause was intended to be transitional in nature for the purpose of facilitating the transition from pre-modernised instruments to modern awards. The clause was not directed at overaward payments in the traditional sense. As the transition to modern awards was effectively complete on 1 July 2014, the absorption clause no longer has any transitional function.³³

[36] The Full Bench doubted that the absorption clause can properly be said to be ‘about’ one or more of the matters specified in paragraphs 139(1)(a) to (j) of the FW Act or that it is an ‘incidental term’ within the meaning of s.142, and it is not a ‘machinery term’ within the meaning of s.142. Consequently, it is doubtful that it is a ‘permitted term’.³⁴ However determined it was unnecessary for the Full Bench to reach a concluded view, as even if the absorption clause was a permitted term (under either s.139(1) or s.142(1)), s.138 of the FW Act relevantly provides that it could only be included in a modern award if it was necessary to achieve the modern awards objective.³⁵

[37] In the *September 2015 decision* the Full Bench found that regulation of the interaction between minimum award entitlements and overaward payments was not the function of the minimum safety net of terms and conditions established by the FW Act. Such matters are adequately dealt with by the common law principles of set off and should be left to individual employers and employees to determine. The Full Bench concluded that as the absorption clause is not a term which is necessary to achieve the modern awards objective it cannot be included in a modern award.³⁶

[38] In those proceedings ABI, Ai Group and the MBA submitted that it would not be appropriate to remove the absorption clause while the take home pay order clause remained. After noting the comments in the *December 2014 decision*, the Full Bench said:

³⁰ [2015] FWCFB 6656 at [77]–[81]

³¹ [2018] FWC 5810

³² Ibid.

³³ Ibid at [37]–[38]

³⁴ Ibid at [40]–[56]

³⁵ Ibid at [56]

³⁶ Ibid at [74]

[77] Our conclusion in respect of the absorption clause raises a question as to the appropriateness of retaining the take-home pay order subclause. In the summary document published on 25 August 2015 interested parties were put on notice that if there was no relevant source of power then the subclause should be deleted...

[81] We do not propose to determine this issue at this time. We will revisit the take-home pay provision before the conclusion of the Review after providing all interested parties with a further opportunity to make submissions regarding the relevant source of power and, if there is such a power, whether we should exercise our discretion to retain the subclause in either its current form or with amendments.'

[39] As mentioned previously, a Statement relating to this issue was published on 16 October 2018³⁷ and that Statement referred the consideration of this issue to the plain language full bench for determination. Interested parties were provided an opportunity to file written submissions on the issue and the matter will be determined on the papers.

(iv) *Relationship between award and NES*

[40] Clause 2.1 in the exposure drafts provides that the National Employment Standards (NES) '*and entitlements in this award contain the minimum conditions of employment for employees covered by this award*' (emphasis added). Modern awards currently provide that '*the NES and this award contain the minimum conditions of employment for employees covered by this award*'.

[41] In the *December 2014 decision* the Full Bench agreed with submissions that awards and the NES contain both rights and obligations of employers and employees and that this was captured more adequately by the current clause than by the proposed new clause. Consequently, the current wording will be retained.³⁸

[42] The exposure drafts state at clause 2.2: 'The employer must ensure that copies of this award and the NES are available to all employees to whom they apply'. Modern awards currently provide:

The employer must ensure that copies of the award and the NES are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

[43] In the *December 2014 decision* the Full Bench agreed with submissions that the current award clause required the award to be provided broadly to employees, and determined that the current clause will be retained with amendments. The Full Bench considered that the words 'whichever makes them more accessible' in the current clause gave rise to an obligation which would be difficult to meet in practice and should be omitted, but the word 'accessible' should be added before 'electronic means' to make clear that if the award and NES are provided by electronic means then the means provided must be accessible to all employees. The amended clause reads:

³⁷ [2018] FWC 5810

³⁸ [2014] FWCFB 9412 at [24]–[25]

The employer must ensure that copies of the award and the NES are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.³⁹

(v) *Inclusion of NES summaries and a payslips provision*

[44] The exposure drafts published for the Group 1 awards incorporated extracts and summaries of NES entitlements as well as notes to draw the reader's attention to certain entitlements, so as to assist parties in understanding the interaction between the award and NES in a single document. The exposure drafts also included a new provision drawing attention to the requirements of the FW Act and *Fair Work Regulations 2009* (FW Regulations) in relation to pay slips.

[45] The *December 2014 decision* noted concerns that the inclusion of such notes and references in an award, as a legal instrument, may cause confusion or mislead the reader.⁴⁰ In the context of providing for ordinary hourly rates of pay to be included in schedules to awards the Full Bench in the *July 2015 decision* determined that the exposure drafts will include a note which draws employers' attention to their obligations under the FW Regulations regarding record keeping and payslips, including the requirements to separately identify allowances.⁴¹

(vi) *Inclusions of examples that clarify the operation of provisions*

[46] The exposure drafts incorporate a select number of examples to provide additional guidance to employers and employees as to the operation and interpretation of award provisions. The *December 2014 decision* noted that a number of parties had opposed inclusion of examples, submitting that this did not advance the objective of making awards simple and easy to understand, or raising questions about their legal effect.⁴²

[47] The Full Bench in the *December 2014 decision* determined that the inclusion of relevant and accurate examples will make modern awards easier to understand and for that reason they will be included where appropriate.⁴³

(vii) *Inclusion of index of facilitative provisions*

[48] Some modern awards currently include facilitative provisions. The exposure drafts include a definition of what a facilitative provision is and an index detailing where such provisions could be found in each award.

[49] The *December 2014 decision* notes that the major concern of employer parties in relation to the proposed provisions was the following sentence, derived from the *Safety Net Adjustment and Review September 1994*⁴⁴: '[f]acilitative provisions are not to be used as a device to avoid award obligations nor should they result in unfairness to an employee or employees covered by this award.' The Full Bench decided to delete this sentence,

³⁹ Ibid at [28]–[29]

⁴⁰ Ibid at [30]–[34]

⁴¹ [2015] FWCFB 4658 at [55]–[57]

⁴² [2014] FWCFB 9412 at [59]–[62]

⁴³ Ibid at [63]

⁴⁴ Dec 2120/95 Print M5600

acknowledging that it may have unintended consequences and could give rise to an additional legal obligation, and that fairness issues are more appropriately addressed in the context of particular facilitative provisions.⁴⁵

[50] The Full Bench in the *December 2014 decision* saw merit in inserting an index of facilitative provisions, in order to make awards easier to understand and to support the objective of promoting flexible working practices. The Full Bench observed that the introductory words to the index may require amendment to accommodate the nature of the facilitative provisions in a particular award, but this can be done on an award-by-award basis in response to proposals from interested parties.⁴⁶

(viii) *Identification of clauses that do not apply to casual employees*

[51] Some exposure drafts included a new clause that would specify the provisions of the award that do not apply to casual employees, and a note asking parties to provide a list of these provisions.

[52] This proposal generated significant controversy and the Full Bench in the *December 2014 decision* decided to remove the clause from the exposure drafts for awards that do not currently contain such a provision.

(ix) *Definitions of all purpose and ordinary hourly rate of pay*

[53] In the exposure drafts, ‘all purposes’ in respect of a particular allowance is defined to mean that the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on leave.

[54] The Full Bench in the *July 2015 decision* determined that this definition will be amended to read:

all purposes means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave. (emphasis added)⁴⁷

[55] The Full Bench observed that the term ‘ordinary hourly rate’ is used in contrast to ‘minimum hourly rate’ in affected awards to make clear that all purpose allowances must be added to the minimum rate of pay before calculating any penalty rate. In affected awards, penalties and loadings are expressed as a percentage of the ordinary hourly rate (for example, ‘overtime is paid at 150% of the ordinary hourly rate’), to make clear that an all-purpose allowance to which an employee is entitled must be added to the minimum rate before calculating the loaded rate. That is, there is a *compounding* effect.⁴⁸

[56] While some concerns were raised that the established practice in relation to all purpose allowances may not apply to calculation of some payments under particular awards, the Full Bench in the *July 2015 decision* determined that definitions of ‘all purposes’ and ‘ordinary hourly rate’ along the lines above will be inserted into all affected awards.

⁴⁵ [2014] FWCFB 9412 at [40]–[42]

⁴⁶ Ibid at [43]

⁴⁷ [2015] FWCFB 4658 at [91]

⁴⁸ Ibid at [42]–[44]

[57] An attachment to the *Group 3 decision* contained a list of awards containing all purpose allowances.⁴⁹ Parties were invited to comment on the list and any issues as to whether a particular payment is payable for all purposes, and, in particular, whether an allowance should be added to a minimum rate before calculating a penalty or loading. It was noted in a subsequent decision that this matter would be finalised by the plain language full bench.⁵⁰

(x) *Schedules summarising hourly rates of pay*

[58] Most exposure drafts contain detailed schedules of hourly rates of pay incorporating penalty rates and loadings. The Full Bench in the *December 2014 decision* observed that such schedules will make modern awards easier to understand and for that reason will be retained.⁵¹

[59] In the *July 2015 decision* the Full Bench agreed that it was not prudent to adopt a ‘one size fits all’ approach and that schedules of hourly rates will be developed in consultation with interested parties.⁵² The schedules of hourly rates will be legally enforceable and a note will be inserted into the schedules stating that ‘employers who meet their obligations under this schedule are meeting the obligations under the award’.⁵³

(xi) *Casual loadings*

[60] In the *July 2015 decision* the Full Bench expressed the view that it is desirable that there be a consistent rule for the calculation of casual loading which should apply across all awards. The Bench’s provisional view was that the casual loading will be calculated as 25% of the minimum rate (not the ordinary hourly rate), with any all purpose allowance being added after that.⁵⁴

[61] This issue was revisited in the *September 2015 decision*, following further submissions from interested parties. The Full Bench then concluded that:

- for a number of awards containing allowances that are all purpose in nature or stated to form part of the ordinary hourly rate, adoption of the provisional view would result in a reduction in hourly rates of pay for casual employees;⁵⁵
- the provisional view was inconsistent with the general approach of the Australian Industrial Relations Commission (AIRC) Full Bench *Award Modernisation Decision* of 19 December 2008⁵⁶ that the casual loading should be applied to the ordinary rate rather than the minimum rate,⁵⁷ and

⁴⁹ [2017] FWCFB 3433 at Attachment B

⁵⁰ [2017] FWCFB 5536 [579] – [580]

⁵¹ [2014] FWCFB 9412 at [58]

⁵² [2015] FWCFB 4658 at [62]

⁵³ *Ibid* at [63]

⁵⁴ *Ibid* at [70]

⁵⁵ [2015] FWCFB 6656 at [93]

⁵⁶ [2008] AIRCFB 1000 at [50]

⁵⁷ [2015] FWCFB 6656 at [102]

- adoption of the provisional view was not justified where there was no evidence of practical difficulty in the operation of current award provisions which are consistent with the *Award Modernisation Decision*.⁵⁸

[62] The Full Bench determined that the general approach to casual loading will remain as in the exposure drafts, with casual loading expressed as 25% of the ordinary hourly rate in the case of awards which contain any all purpose allowances, and as 25% of the minimum hourly rate in awards which do not contain any such allowances.⁵⁹

[63] The Full Bench noted the concern underlying the provisional view, namely, whether it was appropriate for certain allowances currently expressed as all purpose to be paid at an increased level for casual employees by application of the casual loading. The preferable approach to this issue was to permit reconsideration, on an award-by-award basis during the course of the 4 yearly review, as to whether any existing allowance should retain its ‘all purpose’ designation or should be payable on some different basis.⁶⁰

(xii) *Rate of pay while on leave*

[64] In the *July 2015 decision* the Full Bench noted that historically, awards provided that an employee would receive their ordinary rate of pay while on leave and that in the Part 10A award modernisation process the AIRC Full Bench⁶¹ retained an employee’s entitlement to be paid their ordinary rate of pay (rather than the base rate as provided in the NES) while on annual leave, if this was an existing entitlement.⁶²

[65] The Full Bench confirmed that the payment of all purposes allowances when on leave should generally be limited to annual leave and such other leave payments as are supplemented under the award. When an award does not specify the amount payable on forms of leave other than annual leave, an employee is entitled to the base rate of pay as defined in s.16 of the FW Act.⁶³

[66] If a dispute arises about particular payments applying to an employee while on annual leave (including all purpose allowances), this will be dealt with during the Award stage of the Review. If an award does provide for payment of all purpose allowances while on a period of paid leave other than annual leave, a note may have been added to the exposure draft on an award-by-award basis.

[67] The Full Bench accepted the possibility that where an employee is receiving an overaward payment, their base rate as defined in s.16 of the FW Act may be higher than the ordinary rate. This possibility may be addressed by including a note in all modern awards drawing attention to s.16 and s.90 of the FW Act. The note will explain that when the base rate of pay is higher than the ordinary rate in the award, the higher rate must be paid to the employee while on leave.⁶⁴

⁵⁸ Ibid at [107]

⁵⁹ Ibid at [110]

⁶⁰ Ibid at [109]

⁶¹ [2008] AIRCFB 717 at [30]

⁶² [2015] FWCFB 4658 at [76]-[78]

⁶³ Ibid at [90]

⁶⁴ Ibid at [94]

(xiii) *Double time vs 200%*

[68] The Full Bench in the *July 2015 decision* noted submissions from a number of unions that replacing terms such as ‘time and a half’ and ‘double time’ with rates expressed as percentages of minimum hourly rates or ordinary hourly rates, reduced the award entitlements of an employee receiving an overaward payment.⁶⁵

[69] The Full Bench observed that modern awards provide a safety net of minimum entitlements and that if an employer chooses to pay an employee more than the minimum amount payable for ordinary hours worked, the employer is not required to use that higher rate when calculating penalties or loadings. The terminology in the exposure drafts of 150% and 200% rather than ‘time and a half’ and ‘double time’ will be retained.⁶⁶

(xv) *National Training Wage schedule*

[70] The National Training Wage schedule (the NTW Schedule) contains rates of pay for employees undertaking a traineeship under a training contract. It appeared in 104 of 122 modern awards.

[71] The exposure drafts for Group 1 awards changed the presentation of rates for full-time and part-time traineeships in the NTW Schedule by combining weekly full-time and hourly part-time rates in one table. In the *December 2014 decision* the Full Bench accepted the general agreement of parties that the proposed changes not be adopted.⁶⁷

[72] In the *October 2015 decision* the Full Bench noted that parties had been asked to identify any training programs to which clause D.3.3 of the NTW Schedule may still have application.⁶⁸ Clause D.3.3 provides:

D.3.3 This schedule does not apply to the apprenticeship system or to any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 2007.

[73] As no party was able to identify any such training programs, the Full Bench confirmed that clause D.3.3 will not be included.⁶⁹

[74] Following a consultation process the Full Bench in AM2016/17 decided to remove the six page NTW Schedule from 94 modern awards and instead incorporate the terms of the schedule by reference to the *Miscellaneous Award 2010* in which the NTW Schedule was retained and re-drafted to ensure it complies with plain language drafting principles. Interested parties requested that the NTW Schedule be retained and tailored in a further nine awards. This issue was referred to the plain language Full Bench for hearing and determination.

⁶⁵ Ibid at [95]

⁶⁶ Ibid at [95]-[96]

⁶⁷ [2014] FWCFB 9412 at [64]-[67]

⁶⁸ [2015] FWCFB 7236 at [354]

⁶⁹ Ibid at [355]

[75] In further decisions in relation to the Group 1C, 1D and 1E, Group 2 and Group 3 exposure drafts, a number of issues were determined that may flow on to other exposure drafts.

Consultation regarding changes to rostering

[76] Following the amendment to the FW Act which saw the inclusion of a new section 143A regarding consultation, all modern awards were updated in December 2013 to incorporate a new model consultation term which is intended to impose an obligation on an employer to consult an employee regarding changes to rosters or ordinary hours of work.⁷⁰ A number of awards, including the *Black Coal Mining Industry Award 2010* and the *Wool, Storage, Sampling and Testing Award 2010*, include provisions in relation to changes to rosters. The Full Bench determined that such provisions must accord with the model consultation term.

Transitional provisions

[77] As a result of the *4 yearly review of modern awards—Transitional Provisions* decision issued on 11 February 2015⁷¹, a number of provisions were deleted from awards and exposure drafts as they no longer had any effect. Such provisions included:

- (i) transitional provisions in modern awards that ceased to operate on or before 31 December 2014 (including accident pay⁷², district allowances⁷³ and certain redundancy provisions);
- (ii) provisions that provided different State-based entitlements that could not operate after 31 December 2014 in accordance with s.154 of the FW Act; and

Alleged NES Inconsistencies

[78] In the *4 yearly review of modern awards—Alleged NES Inconsistencies*⁷⁴ decision a Full Bench reviewed a number of provisions that it was alleged were inconsistent with the National Employment Standards (NES).

[79] Submissions were received from number of parties to the review as well as the FWO identifying such provisions. Them provisions were grouped into five categories:

- (1) Provisions which were concerned with restrictions on the payment of annual leave loading upon termination of employment;
- (2) Textile, Clothing, Footwear and Associated Industries Award 2010 provisions;
- (3) Provisions about which there appeared to be agreement as to both the existence of an inconsistency with the NES and the award variation appropriate to remedy that inconsistency;

⁷⁰ [\[2013\] FWCFCB 10165](#)

⁷¹ [\[2015\] FWCFCB 644](#)

⁷² Modified Accident Pay provisions were re-inserted into a small number of awards in [\[2015\] FWCFCB 3523](#)

⁷³ The issue of location allowances was before the Full Bench in [AM2014/190](#)

⁷⁴ [\[2015\] FWCFCB 3023](#)

(4) Provisions about which there appeared to be agreement as to the existence of an inconsistency with the NES, but where no agreement existed concerning the appropriate remedial award variation; and

(5) Provisions about which there was no agreement as to the existence of an inconsistency with the NES.

[80] Provisions that limited when an employee could take annual leave or that provided lesser entitlements to notice upon termination than provided in the NES were referred to the Annual Leave Full Bench for hearing and determination⁷⁵. Provisions appearing in the *Textile, Clothing, Footwear and Associated Industries Award 2010* were dealt with as part of the substantive claims in that particular award.

[81] A number of provisions falling within the remaining categories were amended in order to address the identified inconsistencies, for example:

- removal of a requirement that a period of personal/carer's leave must be at least seven days' duration before it could be accessed during a period of paid annual leave from the *Air Pilots Award 2010*;
- removal of a requirement that unpaid carer's leave be taken by casual employees in minimum blocks of two days from the *Hair and Beauty Industry Award 2010*; and
- insertion of a requirement that the employer agree to an employee cashing out a period of accrued paid personal leave from the *Timber Industry Award 2010*.

[82] Provisions in relation to the accrual of annual leave and transfer of business that were inconsistent with the FW Act, which appeared across multiple modern awards, were also removed in a decision issued in May 2015.⁷⁶ Further award-specific issues were dealt with in a subsequent decision in the Award stage.⁷⁷

Probation provisions

[83] Notes were inserted in the exposure drafts for Group 1 awards that contain probation provisions as follows:

Note: The Commission's provisional view is that it may no longer be necessary to include provisions relating to probationary periods in modern awards, given changes in the legislative scheme. This does not represent a concluded view of the Commission, and parties are invited to make submissions on this issue.

[84] In the *October 2015 decision*, the Commission confirmed their provisional view and the probation clause was deleted from the exposure draft based on the *Mining Industry Award 2010*.⁷⁸

⁷⁵ [\[2016\] FWC FB 3177](#) at [5]–[6]

⁷⁶ [\[2015\] FWC FB 3023](#)

⁷⁷ See for example [\[2016\] FWC FB 191](#)

⁷⁸ [\[2015\] FWC FB 7236](#) at [139]

Ceremonial leave

[85] In the *Group 2 decision* the Full Bench extended an entitlement to ceremonial leave to additional awards in the Health and community services sector. The various provisions were also standardised to include Torres Strait Islanders.⁷⁹

Definitions

[86] In the *Group 3 decision* the Full Bench proposed that the definitions should appear at clause 2 within the body of the award, rather than as the final Schedule to the award as was the case in the earlier exposure drafts.⁸⁰ This issue, along with the finalisation of the overall structure of the award, has been determined by the plain language Full Bench.

[87] In order to reduce duplication and remove any ambiguity, the *Group 3 decision* also determined that where an industry definition appears in both the definitions clause and the coverage clause, the industry definition or definitions should be retained in full in the coverage clause. The definitions clause will only include a definition of the industry which refers readers to the coverage clause rather than replicating or summarising that definition.⁸¹

Occupational health and safety references

[88] A *Group 3 decision* identified that the use of the term ‘occupational health and safety’ in a number of modern awards is inconsistent with work health and safety laws across Australia which use the more contemporary term ‘work health and safety’. A list of awards using this term was appended to the decision and its use will be reviewed by the Plain language Full Bench.⁸²

3.2 Award specific technical and drafting issues determined

3.2.1 Group 1

[89] Exposure drafts based on the awards allocated to Group 1 were first published on the Commission’s website in September–October 2014. A series of conferences and hearings were held and a number of decisions were issued in relation to this group of awards (see Attachment B for complete list of decisions issued).

[90] All technical and drafting matters relating to Group 1 awards have now been determined, with the exception of the awards referred to the plain language project and two issues in the exposure drafts for the *Black Coal Mining Award 2010* and the *Marine Tourism and Charter Vessels Award 2010*.

[91] In a decision⁸³ issued in June 2018 it was stated that the Full Bench proposed to grant a request by the Coal Mining Industry Employer Group (CMIEG) to be heard on outstanding matters concerning public holiday payments. The CMIEG suggested a brief hearing would permit the interested parties to be heard and also be of benefit in assisting the Commission in

⁷⁹ [2016] FWCFB 7254 at [120]–[125]

⁸⁰ [2017] FWCFB 3433 at [333]

⁸¹ Ibid at [339]

⁸² [2017] FWCFB 3433 at [380]–[382] and Attachment C

⁸³ [2018] FWCFB 3802 see [93] – [97]

determining the matters. The CMIEG also proposed an interim or alternative step could be a conference convened by a delegated member of the Full Bench. A conference relating to this issue will be convened before Vice President Hatcher shortly.

[92] A decision⁸⁴ issued by the Group 1 Full Bench in June 2018 canvassed an outstanding issue relating to casual overnight charter employees and casual non-overnight charter employees. Vice President Hatcher will convene a conference to deal with this issue and a background paper summarising the issues will be published prior to the conference.

Cement, Lime and Quarrying – amalgamated award

[93] The Commission identified the *Cement and Lime Award 2010* and the *Quarrying Award 2010* as potentially being able to be amalgamated.⁸⁵ In a conference on 13 May 2014, interested parties discussed the possibility of consolidating these two awards.⁸⁶ An amalgamated exposure draft for the *Cement and Lime and Quarrying Award 2010* (amalgamated award) was published on 9 October 2014. Interested parties were given the opportunity to make further submissions concerning the amalgamated exposure draft.⁸⁷ Submissions received dealt with a range of issues which were primarily technical or drafting nature.

[94] Further conferences and hearings⁸⁸ were held to identify the variations sought; the extent of any agreement in relation to those variations and necessary amendments to be reflected in a revised exposure draft.⁸⁹ The Full Bench proposed the following wording for clause 1.3 of the amalgamated award's exposure draft:

‘1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under this award, as it existed prior to that variation. A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the *Quarrying Award 2010* as it existed prior to its revocation.’⁹⁰

[95] In a decision issued in September 2018, the Full Bench confirmed the proposed wording and their proposed course of action regarding the amalgamated award⁹¹ noting that the variation ensures the clause does not restrict rights, privileges, obligations or liabilities arising from the Quarrying Award prior to its revocation.⁹²

[96] In a decision issued in June 2018, the Full Bench noted that the revocation of the Quarrying Award enlivens s.164 of the FW Act,⁹³ which states:

‘Special criteria for revoking modern awards

⁸⁴ [2018] FWCFB 3802 see [194] – [213]

⁸⁵ [2014] FWFB 5537 at para [4]

⁸⁶ See [transcript](#) of 13 May 2014 at PN1247 to PN1261

⁸⁷ [2014] FWCFB 9412 at para [172] and [2017] FWCFB 3177

⁸⁸ See transcripts for [13 May 2014](#), [3 July 2014](#), [24 October 2014](#) and on [25 March 2015](#)

⁸⁹ [2014] FWCFB 9412 at paras [172-173]

⁹⁰ [2018] FWCFB 3802 at para [122]

⁹¹ [2018] FWCFB 5602 at paras [39]-[44]

⁹² [2018] FWCFB 5602 at para [41]

⁹³ [2018] FWCFB 3802 at para [119]

The FWC must not make a determination revoking a modern award unless the FWC is satisfied that:

- (a) the award is obsolete or no longer capable of operating; or
- (b) all the employees covered by the award are covered by a different modern award (other than the miscellaneous modern award) that is appropriate for them, or will be so covered when the revocation comes into operation.’

[97] The Full Bench confirmed s.164(b) of the FW Act will be satisfied by the variation to clause 1.3. It noted all the employees that are covered by the Quarrying Award will be covered by the amalgamated award when it is made.⁹⁴ Two separate determinations will be issued relating to the amalgamation of these awards, one determination will revoke the Quarrying Award, the other will vary the Cement and Lime Award. The amalgamated award will retain the Cement Award’s code of MA000055. This process will be finalised in October 2019, when exposure drafts are scheduled to become new awards.

3.2.2 Group 2

[98] Exposure drafts based on the awards allocated to Group 2 were published on the Commission’s website in September–October 2014. These exposure drafts were prepared based on the outcome of decisions in Group 1. Following conferences, hearings and further submissions, two decisions were issued in relation to these awards (see Attachment B) and the exposure drafts have been updated and re-published in 2016 and 2017. All technical and drafting matters relating to Group 2 awards have now been determined, with the exception of the awards referred to the plain language Full Bench and a small number of technical and drafting issues relating to the exposure drafts for the *Fire Fighting Industry Award 2010* and the *Graphic Arts Award 2010*.

[99] Following a conference held in December 2018, interested parties were asked to file submissions relating to the exposure draft for the *Graphic Arts Award 2010*. Two submissions have been received by the Ai Group and the AWU and a separate Statement will be issued shortly. The Graphic Arts Exposure Draft will be published concurrently with that Statement.

[100] On 4 December 2018, a [Report](#) was issued relating to 3 outstanding issues in the exposure draft for the *Fire Fighting Industry Award 2010*. This report provided interested parties (in particular employer parties) the opportunity to file a short written submission regarding the outstanding issues. The Report outlined that in the event no submission was received the positions set out in the Report would be adopted in the exposure draft. A Statement issued on 12 February 2019⁹⁵ indicated that no submissions had been filed and the relevant updates would be made to the exposure draft.

3.2.3 Group 3

[101] Exposure drafts based on the awards allocated to Group 3 were published on the Commission’s website in December 2015 and January 2016. These exposure drafts were prepared based on the outcome of decisions in Group 1. Following conferences, hearings and

⁹⁴ [\[2018\] FWCFB 3802](#) at para [121]

⁹⁵ [2019] FWC 905

further submissions, a number of decisions were issued in relation to the technical and drafting aspects of these awards (see Attachment B) and the exposure drafts have been updated and re-published throughout 2016 and 2017. All technical and drafting matters relating to Group 3 awards have now been determined, with the exception of the awards referred to the plain language full bench and a small number of issues in the exposure drafts for the *Ports Harbours and Enclosed Vessels Award 2010*, the *Sugar Industry Award 2010* and the *Pastoral Award 2010* which are detailed below.

[102] In the exposure draft for the *Ports Harbours and Enclosed Vessels Award 2010*, there remains an issue relating to rates that apply to shiftworkers on weekends. The issue was raised by the Australian Federation of Employers and Industry (AFEI) and the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU). A conference was held on 20 December 2018 and a separate decision determining this issue will be published in due course.

[103] In the exposure draft for the *Sugar Industry Award 2010* there remains an outstanding issue relating to the single contract hourly rate. This issue was canvassed in Group 3 decision⁹⁶ published on 15 October 2018. A conference will be held before Deputy President Asbury in relation to this issue. A background paper summarising the issue will be published prior to the conference.

[104] In the exposure draft for the *Pastoral Award 2010* an issue relating to meal breaks and allowances remains to be determined.⁹⁷ A separate decision determining this issue will be published in due course.

3.2.4 Group 4

[105] Exposure drafts based on the awards allocated to Group 4 were first published on the Commission's website in May 2016. The exposure drafts in Group 4 were published with a different structure to those exposure drafts in Groups 1-3 as they incorporated changes resulting from plain language principles established during the plain language project. This was outlined in a Statement issued on 10 May 2016.⁹⁸ The Group 4 exposure drafts have been updated and re-published a number of times during 2017 and 2018 and a number of decisions relating to these exposure drafts have been issued (see Attachment B). All technical and drafting matters relating to Group 4 awards have now been determined, with the exception of the awards referred to the plain language project and the exposure drafts for the *Mannequins and Models Award 2010*.

[106] Technical and drafting issues in respect of the *Mannequins and Models Award 2010* remain outstanding. A separate conference will be convened in April 2019 to deal with these outstanding matters and an updated exposure draft will be published for comment prior to the conference.

4. Next Steps

[107] As outlined above at paragraph [6], all exposure drafts in Groups 1–4 will be republished throughout 2019 in line with that timeline.

⁹⁶ [\[2018\] FWCFB 6368](#) at [118] – [129]

⁹⁷ [2017] FWCFB 5536 at [285] – [292]

⁹⁸ [2016] FWC 2924 – see Attachment A

Group 1

[108] Updated exposure drafts for Group 1 will be published on **Wednesday 13 February 2019**. Interested parties are to file written submissions in relation to these updated exposure drafts by no later than **4.00 pm** on **Wednesday 13 March 2019**. Submissions are to be sent to amod@fwc.gov.au.

Group 2

[109] Updated exposure drafts for Group 2 will be published on the Commission's website on **Friday 15 February 2019**. Interested parties are to file written submissions in relation to these updated exposure drafts by no later than **4.00 pm** on **Friday 15 March 2019**. Submissions are to be sent to amod@fwc.gov.au.

Group 3

[110] Updated exposure drafts for Group 3 will be published on the Commission's website on **Friday 1 March 2019**. Interested parties are to file written submissions in relation to these updated exposure drafts by no later than **4.00 pm** on **Friday 29 March 2019**. Submissions are to be sent to amod@fwc.gov.au.

Group 4

[111] Updated exposure drafts for Group 4 will be published on the Commission's website by **Friday 8 March 2019**. Interested parties are to file written submissions in relation to these updated exposure drafts by no later than **4.00 pm** on **Friday 5 April 2019**. Submissions are to be sent to amod@fwc.gov.au.

[112] Interested parties should note that written submissions are to contain comment on the updates to the relevant exposure draft only; it is not an opportunity to reargue matters that have already been determined by the Commission throughout the award stage.

PRESIDENT

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Attachment A—List of modern awards—by sub-group**Group 1 (30 awards)**

Award code	Award title	Matter No.
Subgroup 1A		
MA000098	Ambulance and Patient Transport Industry Award 2010	AM2014/65
MA000022	Cleaning Services Award 2010	AM2014/69
MA000024	Cotton Ginning Award 2010	AM2014/71
MA000016	Security Services Industry Award 2010	AM2014/89
Subgroup 1B		
MA000060	Aluminium Industry Award 2010	AM2014/64
MA000054	Asphalt Industry Award 2010	AM2014/66
MA000055	Cement and Lime Award 2010	AM2014/68
MA000056	Concrete Products Award 2010	AM2014/70
MA000057	Premixed Concrete Award 2010	AM2014/83
MA000037	Quarrying Award 2010	AM2014/86
MA000107	Salt Industry Award 2010	AM2014/88
Subgroup 1C		
MA000010	Manufacturing and Associated Industries and Occupations Award 2010	AM2014/75
MA000059	Meat Industry Award 2010	AM2014/78
MA000069	Pharmaceutical Industry Award 2010	AM2014/81
MA000074	Poultry Processing Award 2010	AM2014/82
MA000017	Textile, Clothing, Footwear and Associated Industries Award 2010	AM2014/91
MA000071	Timber Industry Award 2010	AM2014/92
MA000089	Vehicle Manufacturing, Repair, Services and Retail Award 2010	AM2014/93
MA000044	Wool Storage, Sampling and Testing Award 2010	AM2014/94
Subgroup 1D		
MA000001	Black Coal Mining Industry Award 2010	AM2014/67
MA000011	Mining Industry Award 2010	AM2014/79
MA000072	Oil Refining and Manufacturing Award 2010	AM2014/80
MA000015	Rail Industry Award 2010	AM2014/87
MA000053	Stevedoring Industry Award 2010	AM2014/90
Subgroup 1E		
MA000061	Gas Industry Award 2010	AM2014/72
MA000062	Hydrocarbons Industry (Upstream) Award 2010	AM2014/73
MA000093	Marine Tourism and Charter Vessels Award 2010	AM2014/76
MA000086	Maritime Offshore Oil and Gas Award 2010	AM2014/77
MA000108	Professional Diving Industry (Industrial) Award 2010	AM2014/84
MA000109	Professional Diving Industry (Recreational) Award 2010	AM2014/85

Group 2 (19 awards)

Award code	Award title	Matter No.
Subgroup 2A		
MA000092	Alpine Resorts Award 2010	AM2014/198
MA000114	Aquaculture Industry Award 2010	AM2014/200
MA000026	Graphic Arts Award 2010	AM2014/203
MA000068	Seafood Processing Award 2010	AM2014/213
MA000084	Storage Services and Wholesale Award 2010	AM2014/214
Subgroup 2B		
MA000118	Animal Care and Veterinary Services Award 2010	AM2014/199
MA000027	Health Professionals and Support Services Award 2010	AM2014/204
MA000031	Medical Practitioners Award 2010	AM2014/206
MA000034	Nurses Award 2010	AM2014/207
MA000012	Pharmacy Industry Award 2010	AM2014/209
Subgroup 2C		
MA000063	Passenger Vehicle Transportation Award 2010	AM2014/208
MA000039	Road Transport (Long Distance Operations) Award 2010	AM2014/211
MA000038	Road Transport and Distribution Award 2010	AM2014/212
MA000042	Transport (Cash in Transit) Award 2010	AM2014/215
MA000043	Waste Management Award 2010	AM2014/216
Subgroup 2D		
MA000110	Corrections and Detention (Private Sector) Award 2010	AM2014/201
MA000111	Fire Fighting Industry Award 2010	AM2014/202
MA000008	Horse and Greyhound Training Award 2010	AM2014/205
MA000014	Racing Industry Ground Maintenance Award 2010	AM2014/210

Group 3 (33 awards)

Award code	Award title	Matter No.
Sub-group 3A		
MA000019	Banking, Finance and Insurance Award 2010	AM2014/217
MA000021	Business Equipment Award 2010	AM2014/218
MA000002	Clerks Private Sector Award 2010	AM2014/219
MA000083	Commercial Sales Award 2010	AM2014/221
MA000023	Contract Call Centres Award 2010	AM2014/222
MA000094	Fitness Industry Award 2010	AM2014/227
MA000099	Labour Market Assistance Industry Award 2010	AM2014/232
MA000116	Legal Services Award 2010	AM2014/233
MA000030	Market and Social Research Award 2010	AM2014/236
MA000104	Miscellaneous Award 2010	AM2014/237
MA000106	Real Estate Industry 2010	AM2014/242
MA000082	Sporting Organisations Award 2010	AM2014/245
MA000041	Telecommunications Services Award 2010	AM2014/248
Sub-group 3B		
MA000075	Educational Services (Post-Secondary Education) Award 2010	AM2014/224
MA000076	Educational Services (Schools) General Staff Award 2010	AM2014/225
MA000006	Higher Education – Academic Staff Award 2010	AM2014/229
MA000007	Higher Education – General Staff Award 2010	AM2014/230
MA000112	Local Government Industry Award 2010	AM2014/234
MA000121	State Government Agencies Award 2010	AM2014/246
Sub-group 3C		
MA000045	Coal Export Terminals Award 2010	AM2014/220
MA000085	Dredging Industry Award 2010	AM2014/223
MA000088	Electrical Power Industry Award 2010	AM2014/226
MA000050	Marine Towage Award 2010	AM2014/235
MA000051	Port Authorities Award 2010	AM2014/240
MA000052	Ports, Harbours and Enclosed Water Vessels Award 2010	AM2014/241
MA000122	Seagoing Industry Award 2010	AM2014/243
Sub-group 3D		
MA000101	Gardening and Landscaping Services Award 2010	AM2014/228
MA000028	Horticulture Award 2010	AM2014/231
MA000033	Nursery Award 2010	AM2014/238
MA000035	Pastoral Award 2010	AM2014/239
MA000040	Silviculture Award 2010	AM2014/244
MA000087	Sugar Industry Award 2010	AM2014/247
MA000090	Wine Industry Award 2010	AM2014/249

Group 4 (40 awards)

Award code	Award title	Matter No.
Sub-group 4A		
MA000115	Aboriginal Community Controlled Health Services Award 2010	AM2014/250
MA000018	Aged Care Award 2010	AM2014/251
MA000120	Children's Services Award 2010	AM2014/263
MA000077	Educational Services (Teachers) Award 2010	AM2014/266
MA000100	Social, Community, Home Care and Disability Services Industry Award 2010	AM2014/285
MA000103	Supported Employment Services Award 2010	AM2014/286
Sub-group 4B		
MA000046	Air Pilots Award 2010	AM2014/252
MA000047	Aircraft Cabin Crew Award 2010	AM2014/253
MA000048	Airline Operations—Ground Staff Award 2010	AM2014/254
MA000049	Airport Employees Award 2010	AM2014/255
Sub-group 4C		
MA000079	Architects Award 2010	AM2014/257
MA000020	Building and Construction General On-site Award 2010	AM2014/260
MA000025	Electrical, Electronic and Communications Contracting Award 2010	AM2014/265
MA000064	Hydrocarbons Field Geologists Award 2010	AM2014/273
MA000029	Joinery and Building Trades Award 2010	AM2014/274
MA000032	Mobile Crane Hiring Award 2010	AM2014/278
MA000036	Plumbing and Fire Sprinklers Award 2010	AM2014/280
MA000066	Surveying Award 2010	AM2014/287
Sub-group 4D		
MA000080	Amusement, Events and Recreation Award 2010	AM2014/256
MA000078	Book Industry Award 2010	AM2014/258
MA000091	Broadcasting and Recorded Entertainment Award 2010	AM2014/259
MA000067	Journalists Published Media Award 2010	AM2014/275
MA000081	Live Performance Award 2010	AM2014/276
MA000013	Racing Clubs Events Award 2010	AM2014/282
MA000102	Travelling Shows Award 2010	AM2014/288
Sub-group 4E		
MA000095	Car Parking Award 2010	AM2014/261
MA000070	Cemetery Industry Award 2010	AM2014/262
MA000073	Food, Beverage and Tobacco Manufacturing Award 2010	AM2014/268
MA000105	Funeral Industry Award 2010	AM2014/269
MA000097	Pest Control Industry Award 2010	AM2014/279
MA000065	Professional Employees Award 2010	AM2014/281
MA000113	Water Industry Award 2010	AM2014/289
Sub-group 4F		
MA000096	Dry Cleaning and Laundry Industry Award 2010	AM2014/264
MA000003	Fast Food Industry Award 2010	AM2014/267
MA000004	General Retail Industry Award 2010	AM2014/270
MA000005	Hair and Beauty Industry Award 2010	AM2014/271
MA000009	Hospitality Industry (General) Award 2010	AM2014/272
MA000117	Mannequins and Models Award 2010	AM2014/277

Award code	Award title	Matter No.
MA000058	Registered and Licensed Clubs Award 2010	AM2014/283
MA000119	Restaurant Industry Award 2010	AM2014/284

Attachment B—List of decisions relating to technical and drafting issues —award stage

Citation	Description	Members	Date
[2018] FWCFCB 7210	Award stage - group 2 - exposure drafts	Ross J, Hatcher VP, Hamberger SDP, Bull DP	23/11/2018
[2018] FWCFCB 7145	Award stage - group 3 awards - exposure drafts	Ross J, Hamberger SDP, Clancy DP, Johns C	23/11/2018
[2018] FWCFCB 7007	Group 1 - consultation obligations - Poultry, Meat and Manufacturing awards	Ross J, Hatcher VP, Hamberger SDP, Bull DP, Bissett C	16/11/2018
[2018] FWCFCB 6852	Award stage - group 4 awards - exposure drafts	Ross J, Catanzariti VP, Gostencnik DP, Lee C, Cirkovic C	13/11/2018
[2018] FWCFCB 6368	Award stage - group 3 awards - technical and drafting – outstanding issues	Ross J, Hamberger SDP, Clancy DP, Johns C	15/10/2018
[2018] FWCFCB 5986	Award stage - exposure drafts - technical and drafting issues - Group 2 awards - outstanding issues	Ross J, Hatcher VP, Hamberger SDP, Bull DP	26/09/2018
[2018] FWCFCB 5602	Award stage - group 1 - technical and drafting	Ross J, Hatcher VP, Hamberger SDP, Bull DP, Bissett C	12/09/2018
[2018] FWCFCB 4175	Award stage – exposure drafts – Group 4 awards – further decision	Ross J, Catanzariti VP, Gostencnik DP, Lee C, Cirkovic C	07/08/2018
[2018] FWCFCB 3802	Award stage – group 1 awards – technical and drafting matters – outstanding issues	Ross J, Hatcher VP, Hamberger SDP, Bull DP, Bissett C	28/06/2018
[2018] FWCFCB 1548	Award stage - Group 4 awards - technical and drafting - substantive matters.	Ross J, Catanzariti VP, Gostencnik DP, Lee C, Cirkovic C	21/03/2018
[2018] FWCFCB 1405	Award stage - group 3 awards - outstanding technical and drafting issues	Ross J, Hamberger SDP, Clancy DP, Johns C	13/03/2018
[2017] FWCFCB 5536	Award stage - Group 3 awards - exposure drafts - technical and drafting	Ross J, Hamberger SDP, Clancy DP, Johns C	30/10/2017
[2017] FWCFCB 3433	Award stage - exposure drafts - group 3 awards	Ross J, Hamberger SDP, Clancy DP, Roe C, Johns C	06/07/2017
[2017] FWCFCB 3176	National Training Wage schedule - reference term - next steps	Ross J, Hatcher VP, Hunt C	09/06/2017

Citation	Description	Members	Date
[2017] FWCFB 3177	4 yearly review of modern awards – award stage – group 1 technical and drafting issues – Manufacturing and Associated Industries and Occupations Award 2010 – Professional Diving Industry (Industrial) Award 2010	Ross J, Hatcher VP, Hamberger SDP, Bull DP, Bissett C	09/06/2017
[2016] FWCFB 7254	Group 2 awards - award stage - exposure drafts	Ross J, Hatcher VP, Hamberger SDP, Bull DP, Roe C	10/10/2016
[2016] FWCFB 191	Alleged NES Inconsistencies - Pastoral Award 2010, Building and Construction General On-site Award 2010 and Plumbing and Fire Sprinklers Award 2010	Ross J, Hatcher VP, Hamberger SDP, Bull DP, Bissett C	11/01/2016
[2015] FWCFB 7236	Exposure Drafts - Group 1C, 1D and 1E awards	Ross J, Hatcher VP, Hamberger SDP, Bull C, Bissett C	23/10/2015
[2015] FWCFB 6656	Absorption clause - casual loading	Ross J, Hatcher VP, Hamberger SDP, Bull DP, Bissett C	30/09/2015
[2015] FWCFB 4658	Award stage - drafting and technical issues - ordinary hourly rate of pay	Ross J, Hatcher VP, Hamberger SDP, Bissett C, Bull C	13/07/2015
[2015] FWCFB 3023	Alleged NES Inconsistencies	Ross J, Hatcher VP, Hamberger SDP, Bissett C and Bull C	08/05/2015
[2014] FWCFB 9412	Award stage - exposure drafts Group 1A and 1B - General drafting - alleged inconsistencies with NES	Ross J, Hatcher VP, Hamberger SDP, Bissett C, Bull C	23/12/2014
[2014] FWCFB 1788	Preliminary jurisdictional issues	Ross J, Hatcher VP, Acton SDP, Hamberger SDP, Hampton C	17/03/2014