



STATEMENT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—Family Friendly Work Arrangements

Clause and Other Matters

(AM2015/2 and Others)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 29 MAY 2017

4 yearly review of modern awards – Family Friendly Work Arrangements Clause – Arrangements for this and other matters.

[1] On 18 April 2017, I issued Statement [\[2017\] FWC 2189](#) (Statement) setting out the 10 matters, other than matter AM2015/1, that were before Full Benches in which former Vice President Watson was the presiding Member, and which appeared not to have been completed prior to his resignation from the Fair Work Commission (Commission).¹ In that Statement, I invited parties interested in those matters to file submissions by 4:00 pm Friday 5 May 2017, indicating whether they continued to pursue their claims and whether the Full Bench should be reconstituted in the respective matter.

[2] Submissions were received from a number of interested parties in respect of each of the 10 matters. I have considered these submissions and submissions earlier filed in relation to matter AM2015/2, and now issue this Statement to indicate the course of action to be adopted for each matter.

[3] In summary, no party to the 10 matters has contended that I do not have power under the *Fair Work Act 2009* (Cth) (FW Act) to reconstitute the Full Bench in a matter, where there is a live controversy before the Commission.

[4] I am satisfied that the FW Act provides for me to reconstitute a Full Bench in circumstances where a matter had not been completely dealt with prior to Vice President Watson's resignation from the Commission, where the Vice President was the presiding Member of the responsible Full Bench. That is my proposed course of action in respect of six of the 10 outstanding matters.

[5] In the remaining four matters a notice of discontinuance has been filed or foreshadowed. I propose to list a number of those matters (or related matters) for mention before me, to provide an opportunity for any interested party to advise whether they have a contrary view.

[6] The course of action to be adopted for each matter is described in more detail below.

AM2015/2 – Family Friendly Work Arrangements (Full Bench comprising Vice President Watson, Deputy President Gooley and Commissioner Spencer)

[7] Submissions were received from the Australian Council of Trade Unions (ACTU) and from the Australian Chamber of Commerce and Industry (ACCI), Australian Business Industrial (ABI) and the NSW Business Chamber (NSWBC). I have also considered the earlier submissions filed by Ai Group and the ACTU in relation to this matter.²

[8] The ACTU has confirmed that it continues to pursue its claim in AM2015/2. This matter has been timetabled, with the weeks of 10 and 17 October 2017 reserved for hearing.

[9] Based on the submissions, I will reconstitute the Full Bench to comprise Deputy President Gooley, Commissioner Spencer and a new Member. The reconstituted Full Bench can consider whether any changes should be made to programming.

AM2016/5 – Four yearly review of modern awards – *Ports, Harbours and Enclosed Water Vessels Award 2010, Seagoing Industry Award 2010 and the Marine Towing Award 2010* (Full Bench comprising Vice President Watson, Deputy President Gooley and Commissioner Cambridge)

[10] Submissions were received from Sea Swift Pty Ltd (in relation to the *Ports, Harbours and Enclosed Water Vessels Award 2010* and *Seagoing Industry Award 2010*) and the Maritime Union of Australia (MUA) in relation to all three awards.

[11] This matter is significantly advanced. On 24 February 2017, a Full Bench comprising Vice President Watson, Deputy President Gooley and Commissioner Cambridge issued decision [\[2017\] FWCFB 1138](#) (Decision) in relation to this matter. No orders have been issued in relation to the Decision.

[12] There is disagreement between the submissions as to whether this matter has been completely dealt with for the purposes of s.622, and therefore whether or not s.622 is engaged. Both submissions note that if the Full Bench is reconstituted, s.623 requires that it should take into account everything that has occurred in relation to the matter.

[13] In the circumstances, I will reconstitute the Full Bench to comprise Deputy President Gooley, Commissioner Cambridge and a new Member, for the Full Bench to determine how it wishes to proceed in relation to the remaining issues.

AM2014/190 – Four yearly review of modern awards – Transitional Provisions (Full Bench comprising Vice President Watson and Deputy Presidents Kovacic and Bull)

Accident Pay

[14] Submissions were received from the CMIEG and the Association of Professional Engineers, Scientists and Managers, Australia – Collieries' Staff Division (APESMA), the Australian Manufacturing Workers' Union (AMWU) and the Construction, Forestry, Mining and Energy Union – Mining and Energy Division (CFMEU).

[15] The CMIEG has confirmed that it continues to press its application concerning the accident pay clause in the *Black Coal Mining Industry Award 2010*.

[16] A decision was issued by the Full Bench on 17 October 2016 ([\[2016\] FWCFB 6841](#)) determining that the Commission has jurisdiction to deal with this application. The matter has been programmed and is listed for hearing on 24 to 28 July 2017.

District Allowance

[17] Submissions were received from the Shop, Distributive and Allied Employees' Association (SDA), the Australian Services Union (ASU) and ABI and the NSWBC.

[18] The SDA has confirmed that it continues to press its applications to include a location allowance in the *Pharmacy Industry Award 2010*, *General Retail Industry Award 2010*, *Hair and Beauty Industry Award 2010*, *Fast Food Industry Award 2010* and *Vehicle Manufacturing, Repair, Services and Retail Award 2010*.

[19] The ASU has confirmed its intention to pursue its application in relation to 11 modern awards (inadvertently omitted from Attachment A to the Statement).

[20] As noted in the Statement, the parties have filed submissions regarding the applications. No further directions or orders have been made.

[21] In their submissions, all parties support reconstituting the Full Bench in the matter. However, the SDA has submitted that the matter be adjourned pending the determination of matter AM2014/305 and matter AG2016/3797, as these matters are "likely to bear on the prospects and the outcomes of the SDA and the ASU's applications."³

[22] In the circumstances, I will reconstitute the Full Bench to comprise Deputy Presidents Kovacic and Bull and a new Member, to deal with matter AM2014/190. The matter can then be called on for a directions hearing to deal with the further programming of the matter, including consideration of the SDA's request that the matter be adjourned.

AM2013/30 and AM2014/286 – Four yearly review of modern awards – *Supported Employment Services Award 2010* (Full Bench comprising Vice President Watson, Deputy President Booth and Commissioner Cambridge)

[23] Submissions were received from the Health Services Union (HSU) and United Voice (UV) (the Union Applicants), Our Voice Australia, ABI and the NSWBC, National Disability Services, AED Legal Centre and Practical Workplace Relations (on behalf of users of the SkillsMaster tool).

[24] The Union Applicants have decided to discontinue matter AM2013/30 as a stand-alone application to vary the *Supported Employment Services Award 2010* (SES Award), and propose that the outstanding part of that application be pursued under AM2014/286. A Notice of Discontinuance has been filed.

[25] The submissions filed by other interested parties support outstanding matters in AM2013/30 being considered under AM2014/286.

[26] In these circumstances, as mentioned in paragraph [5] I will list matter AM2014/286 for mention before me, to provide an opportunity for any party with an interest in the matter to advise whether they have a contrary view to those expressed in the written submissions.

[27] In relation to matter AM2014/286, I will reconstitute the Full Bench to comprise Deputy President Booth, Commissioner Cambridge and a new Member, for the matter to be progressed.

AM2013/43 - Application to modernise the Medical Scientists, Pharmacists and Psychologists (Public Sector - Victoria) Award 2003, Health and Allied Services - Public Sector - Victoria Consolidated Award 1998 and the Health Professional Services - Public Sector - Victoria Award 2003 (Full Bench comprising Vice President Watson, Deputy President Smith and Commissioner Lee)

[28] Submissions were received from the Victorian Hospitals' Industrial Association (VHIA) and the HSU.

[29] The VHIA and the HSU have agreed in-principle to the content of a State reference public sector modern award to cover Health Professionals, Medical Scientists and Support Services within Victoria, and will submit a copy of the proposed award to the Commission by close of business 2 June 2017.

[30] Based on the submissions, I will reconstitute the Full Bench to comprise Commissioner Lee and two new Members, for the matter to be progressed.

AM2013/33, AM2013/34 and AM2013/37 - Applications to terminate the *Medical Scientists, Pharmacists and Psychologists (Public Sector - Victoria) Award 2003, Health and Allied Services - Public Sector - Victoria Consolidated Award 1998 and the Health Professional Services - Public Sector - Victoria Award 2003 (Full Bench comprising Vice President Watson, Deputy President Smith and Commissioner Lee)*

[31] Submissions were received from the VHIA and the HSU (in the context of matter AM2013/43).

[32] The submissions request that I take no further action in relation to these matters, as it is proposed by the parties that they will be discontinued immediately upon the finalisation of the proposed award in matter AM2013/43.

[33] In these circumstances, as flagged in paragraph [5] I will list matters AM2013/33, AM2013/34 and AM2013/37 for mention before me, to provide an opportunity for any party with an interest in the matter to advise whether they have a contrary view to those expressed in the written submissions.

AM2013/36 - Application to terminate the *Hospital Specialists and Medical Administrators Award 2002 (Full Bench comprising Vice President Watson, Deputy President Smith and Commissioner Lee)*

[34] A submission was received from the VHIA.

[35] The VHIA seeks to press its application for the *Hospital Specialists and Medical Administrators Award 2002* to be terminated.

[36] I understand from the VHIA's submission that the Australian Salaried Medical Officers Federation (ASMOF) wrote to the Commission on 16 April 2015, requesting that the Full Bench refrain from proceeding to terminate the award until it has considered its submissions, and that the matter be referred to a conference before the Commission. A conference was subsequently held before Deputy President Smith.

[37] No submissions have been filed by ASMOF and the Australian Medical Association has not replied to correspondence sent by the Commission in 2016 in relation to the matter.

[38] In the circumstances, I will reconstitute the Full Bench to comprise Commissioner Lee and two new Members, for the matter to be progressed.

[39] As mentioned earlier, I will list four matters dealt with in this Statement (AM2014/286, AM2013/33, AM2013/34 and AM2013/37) before me for mention on **Friday 9 June 2017 at 9:30am in Sydney**. All requests for video link should be sent to chambers.ross.j@fwc.gov.au.

PRESIDENT

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¹ The matters listed in Attachment A to the Statement were not before 10 separate Full Benches, and matters AM2013/30 and AM 2014/286 have been dealt with together.

² Written submissions of Ai Group in AM2015/1 and AM2015/2 dated 13 April 2017 and the ACTU in AM2015/2 dated 12 April 2017.

³ Written submissions in matter AM2014/190 of the SDA dated 5 May 2017 at p.2.