



# DECISION

*Fair Work Act 2009*  
s.156—4 yearly review of modern awards

**4 yearly review of modern awards—Award stage—*General Retail Industry Award 2020***  
(AM2017/60)

JUSTICE ROSS, PRESIDENT  
VICE PRESIDENT HATCHER  
COMMISSIONER LEE

MELBOURNE, 7 APRIL 2021

*4 yearly review of modern awards – award stage – General Retail Industry Award 2020 – substantive issues.*

[1] In a decision<sup>1</sup> issued 24 November 2020 we rejected a claim by the Shop, Distributive and Allied Employees Association (SDA) to vary what is now clause 17.2 of the *General Retail Industry Award 2020* (the Retail Award 2020) to limit the application of junior rates. In dismissing the SDAs claim, we identified an anomaly concerning the application of junior rates to level 4 classification employees.

[2] To rectify the identified anomaly we decided to vary clause 17.2 of the Retail Award to provide that junior rates only apply to employees classified as levels 1, 2 and 3. In a further decision<sup>2</sup> issued on 4 December 2020 we determined that the operative date of the variation would take effect from 1 May 2021.

[3] A statement<sup>3</sup> issued on 23 February 2021 (February 2021 Statement) published a draft determination giving effect to the 24 November 2020 decision and included a further variation to the redundancy clause of the Retail Award to insert a note that was previously omitted in error.

[4] We provided interested parties the opportunity to comment on the draft determination by 26 March 2021 and stated that in absence of any comments a final variation determination would be issued.

[5] Comments have been received by the Newsagents Association of NSW and ACT (NANA).<sup>4</sup> NANA submits that the draft determination does not take into account the change to

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<sup>1</sup> [\[2020\] FWCFB 6301](#)

<sup>2</sup> [\[2020\] FWCFB 6445](#)

<sup>3</sup> [\[2021\] FWCFB 946](#)

<sup>4</sup> Newsagents Association of NSW and ACT [submission](#), 24 February 2021.

the ‘after 6pm Monday to Friday’ penalty rate for casual employees which, at the time of receipt of the submission, was due to increase from 145% to 150% on 1 March 2021.

[6] It submits that the table in clause B.3.4 at item 6 of the draft determination contains the 145% penalty rate, rather than the new rate of 150%. It also submits that the draft determination omits the footnote which, at the time of the submission, appeared below clause B.3.4.

[7] We agree that the draft determination incorrectly omitted the footnote reference at clause B.3.4 of the Retail Award. The footnote stated:

‘Monday to Friday after 6.00 pm rate from 1 October 2020 to 28 February 2021.’

[8] However, on 1 March 2021 the final transitional penalty rate in the Retail Award for casual employees employed after 6pm Monday to Friday came into effect. A decision was issued by Justice Ross on 25 February 2021 varying the Retail Award to reflect this change.<sup>5</sup> A final determination was issued accordingly, with the effect that the footnote at clause B.3.4 was removed, and the penalty rate at in column 2 of the table appearing in clause B.3.4 of the Retail Award was changed from 145% to 150%.<sup>6</sup>

[9] We will amend the draft determination to reflect the current penalty rate for casual employees employed after 6pm Monday to Friday, being the final transitional penalty rate.

[10] We have also identified that the draft determination omitted the footnotes which appear in the Retail Award at clauses B.3.2 and B.3.5.

[11] We will amend the draft determination to include these footnotes.

[12] Interested parties are invited to provide any comments in relation to the amended draft determination by **4pm on Friday 16 April 2021**. Comments are to be sent to [amod@fwc.gov.au](mailto:amod@fwc.gov.au).

[13] In the absence of any comments, a final determination will be issued and commence operation on 1 May 2021.

PRESIDENT

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<sup>5</sup> [\[2021\] FWC 1033](#).

<sup>6</sup> [PR727385](#)