

[2009] AIRCFB 645



STATEMENT

Workplace Relations Act 1996

s.576E—Procedure for carrying out award modernisation process

Request from the Minister for Employment and Workplace Relations—28 March 2008

Award Modernisation

(AM2008/1)

JUSTICE GIUDICE, PRESIDENT
VICE PRESIDENT LAWLER
VICE PRESIDENT WATSON
SENIOR DEPUTY PRESIDENT WATSON
SENIOR DEPUTY PRESIDENT HARRISON
SENIOR DEPUTY PRESIDENT ACTON
COMMISSIONER SMITH

MELBOURNE, 26 JUNE 2009

VARIATIONS TO MODERN AWARDS

[1] This statement deals with variations to modern awards. It is desirable to set out the Commission's general approach to modern award variations, the process which will be adopted in relation to applications to vary modern awards and to make some general observations.

[2] For the foreseeable future all applications to vary modern awards will be dealt with by the award modernisation Full Bench. Because of the constraints of the process, in particular the requirement that award modernisation conclude by 31 December 2009, applications will usually be dealt with entirely by written submissions. An exception to this is the program already announced for dealing with transitional provisions, which we mention again later. In some cases it may be necessary to defer until 2010 consideration of applications which do not have to be determined prior to 31 December 2009. This will depend on the circumstances including the nature of the application and the overall volume of matters.

[3] Applications to vary the substantive terms of modern awards will be considered on their merits. It should be noted, however, that the Commission would be unlikely to alter substantive award terms so recently made after a comprehensive review of the relevant facts and circumstances including award and NAPSA provisions applying across the Commonwealth. Normally a significant change in circumstances would be required before the Commission would embark on a reconsideration. A variation in the Minister's award modernisation request made after the modern award might constitute such a change. In that respect we repeat what the Full Bench said in its 22 May 2009 statement in relation to the Stage 3 awards:

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“[7] Another more general issue arises in connection with the recent variation to the consolidated request. It is likely that the variation will have some significance in relation to modern awards made in the priority stage and in Stage 2. We do not intend, however, to initiate a review of those awards as that course would lead to considerable delay in completing modernisation. A party covered by a modern award who wishes to challenge terms in that award based on the variation to the consolidated request should make an appropriate application.”¹

[4] We have referred in previous decisions and statements to the need to make residual variations to modern awards. The Full Bench decision of 3 April 2009 contains this passage:

“[26] It is well recognised that modern awards are likely to require other variations before 1 January 2010. Changes will almost certainly be required to recognise changes in legislation. For example, some awards include references to specific provisions of the NES. Those references will have to be replaced with references to sections of the Fair Work Bill 2009. Wage rates may require updating. In some cases supported wage system, adult apprenticeship and national training wage provisions will need to be added to awards. These variations might be seen as a cleaning-up exercise. In large part they will be directed to the implementation of changes which are necessary because of legislation or changes which have already been decided upon in principle. They could be described as residual variations.

[27] With the exception of transitional provisions, which we have dealt with separately, we have decided to defer consideration of residual variations until the final quarter of 2009. By that time most of the issues of principle will have been decided and most of the standard provisions will be settled. By leaving the residual variations until late in the process we also hope to minimise the number of occasions on which a particular modern award will require variation before the commencement date of 1 January 2010.”²

[5] We wish to reinforce the approach there set out and to make some additional points. Most residual variations are not expected to be controversial. It follows that only a limited number of applications to vary will be dealt with as residual variations. We anticipate that at an appropriate time the Full Bench will release draft amendments to deal with residual matters and at that time parties might raise additional uncontroversial matters. After receiving comments the Full Bench would make the variations in each modern award.

[6] Proposals to vary modern awards to include transitional provisions will be dealt with separately. A timetable has been established for dealing with transitional provisions in the priority and Stage 2 awards. A program will be announced in due course for dealing with proposals for transitional provisions in Stage 3 awards. Transitional provisions for Stage 4 awards will be dealt with at the same time as the modern awards are being considered, in accordance with the timetable already announced.

[7] In conclusion we make it clear that applications to vary substantive provisions in modern awards will not be dealt with in the proceedings dealing with transitional provisions. Some proposals already lodged in the proceedings concerning the priority and Stage 2 awards

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include proposals to vary substantive terms. Parties who have made such proposals and who wish to persist with them should make a separate application to vary. Any such application will be dealt with in the manner and according to the approach we have indicated above.

BY THE COMMISSION:

PRESIDENT

¹ [2009] AIRCFB 450.

² [2009] AIRCFB 345, see also [2009] AIRCFB 450 at para [10].

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STATEMENT

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(AM2008/4, AM2009/10)

JUSTICE GIUDICE, PRESIDENT

VICE PRESIDENT LAWLER

VICE PRESIDENT WATSON

SENIOR DEPUTY PRESIDENT WATSON

SENIOR DEPUTY PRESIDENT HARRISON

SENIOR DEPUTY PRESIDENT ACTON

COMMISSIONER SMITH

MELBOURNE, 26 JUNE 2009

PROPOSED RESTAURANT AND CATERING INDUSTRY AWARD

[1] On 5 June 2009 we issued a statement concerning the variation to the award modernisation request made by the Minister for Employment and Workplace Relations (the Minister) on 28 May 2009 and the proposed restaurant and catering industry award.¹

[2] The matter was listed for mention and directions on 22 June 2009. We have considered the proposals which were advanced at the mention and reached some conclusions.

[3] We shall deal with the proposed new award in Stage 4 of award modernisation. Given the history and nature of the matter, however, some modifications to the process may be necessary. In the first instance we require that interested parties lodge written submissions, drafts and all proposals concerning the scope, content and transitional arrangements for the proposed award and any consequential alterations to the *Hospitality Industry (General) Award 2010*² by 24 July 2009. We shall give consideration to the steps necessary to determine the issues once we have had an opportunity to consider what has been filed. These steps might include an exposure draft and further consultations.

[4] At the mention on 22 June 2009 a number of parties foreshadowed arguments concerning the scope of the proposed award and its terms. Given the circumstances which have led to our consideration of the proposed award, we would be assisted by any indications on behalf of the Minister of the scope and terms of the proposed award, including terms relating to hours of work, penalty rates and overtime.

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[5] The Australian Industrial Registry has prepared revised schedules of wages and conditions relevant to this matter which are available on the award modernisation research folder on the Commission homepage: www.airc.gov.au.

BY THE COMMISSION:

PRESIDENT

¹ [\[2009\] AIRCFB 555](#).

² [MA000009](#).