



President's statement

Modern Awards Review 2023-24

Justice Hatcher, President

Sydney, 15 September 2023

[1] On 12 September 2023, I received a letter from the Minister for Employment and Workplace Relations. The Minister expresses the Government's interest in:

... the Fair Work Commission initiating a targeted review of modern awards. The desirability of a review and possible areas for focus arise from outcomes of the Jobs and Skills Summit, changes to the objects, objectives and gender equality provisions of the *Fair Work Act 2009* made by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*, workplace recommendations of the National Cultural Policy, *Revive*, and the Final Report of the Senate Select Committee on Work and Care.

[2] The Minister notes that, consistent with the Commission's usual approach, it would be important for the proposed review to be transparent, informed by consultation and give stakeholders a fair opportunity to express their views.

[3] The Minister identifies four key priorities for a review of modern awards:

- (1) ensuring that modern award wages are appropriately set having regard to the amended objects of the *Fair Work Act 2009* (Cth) (FW Act) regarding gender equality and other amendments aimed at eliminating the gender-based undervaluation of work;
- (2) considering whether the terms of modern awards appropriately reflect the new object of the FW Act and modern awards objective regarding job security and the need to improve access to secure work across the economy, including by:
 - (a) considering award provisions concerned with rostering, guaranteed shifts, and the interaction of permanent, part-time, and casual classifications; and
 - (b) reviewing standard award clauses with general application across the award safety net, to assess their continuing suitability in light of the updated modern awards objective;
- (3) commencing a consultation and research process considering the impact of workplace relations settings on work and care, including early childhood education and care, having regard to relevant findings and recommendations of the Final Report of the Senate Select Committee on Work and Care;

- (4) investigating existing award coverage and minimum standards for the arts and culture sector, including potential coverage gaps, in line with the Government’s National Cultural Policy.

[4] The Minister further states that he considers it critically important that the modern award system be easy to understand, stable, and sustainable, and encourages the use of the proposed review to identify what parties believe could be done to make awards easier to use. The Minister also notes the Government’s view that the review should not result in any reduction in entitlements for award-covered employees.

[5] As to the conduct of the proposed review, the Minister notes that the canvassing of issues would need to be underpinned by targeted research and reports and would encompass work the Commission already has underway. In addition, the letter states:

The Government would be able to support the Commission by providing materials to assist the Commission’s research and evaluation processes, including economic data and evidence.

[6] The Minister requests that I consider the above matters in the exercise of the Commission’s powers.

[7] After considering the contents of the Minister’s letter, I have determined to initiate an award review on the Commission’s own motion to consider ‘priority’ matters (2), (3) and (4) set out in paragraph [3] above and the matter in paragraph [4]. I do not propose to separately consider the gender equality matter (1) identified in paragraph [3] as part of the review. The Minister’s letter acknowledges that the Commission is already dealing with this issue in the manner outlined in the *Annual Wage Review Decision 2022–23*¹ and my Statement of 2 August 2023 and considers that this would be an appropriate way to address this issue. The review will involve the exercise of the Commission’s functions under s 576(2)(aa) of the FW Act and, because the review may ultimately lead to the variation of one or more modern awards, s 157.

[8] The review will be conducted by a five-member Full Bench of the Commission. In respect of issues (2), (3) and (4) in paragraph [3], the conduct of the review will involve the following steps:

- The Commission will issue discussion/research papers addressing each of the issues.
- Following the publication of the discussion/research papers, interested parties will be invited to lodge submissions. There will also be an opportunity to lodge submissions in reply.
- The Commission will then convene conferences to discuss the issues raised in the discussion/research papers and submissions. In accordance with the Commission’s normal practice for award-related matters, the conferences will

¹ [2023] FWCFB 3500.

be open to any interested parties and the conference transcripts will be published on the Commission's website.

- Following the conferences, a final report will be issued which will conclude the review process. The report might provide recommendations about possible next steps if parties seek variations to modern awards or propose that the Commission take steps on its own motion to vary awards.

[9] It may be noted that the last step above is consistent with statements in the Minister's the letter that the 'ability for parties to apply to vary awards is fundamental to the awards system' and that the work of the review 'could provide an evidence base to inform future applications from interested parties or own-motion processes if the Commission considers it appropriate'.

[10] The consideration in the review of the issue in paragraph [4] above will not involve any open-ended reconsideration of the terms of modern awards. The recently-completed 4 yearly review of modern awards involved a holistic review of the drafting of key modern awards, model award clauses, and award clauses relating to important common issues. The 4 yearly review was conducted in a way which encouraged interested parties to participate and resulted in a significant number of variations to modern awards. The comprehensive nature of the 4 yearly review process demanded considerable time and resources from both parties and the Commission itself. It is not intended that the Commission will engage in such a wide-ranging process for a second time. Instead, this aspect of the review will involve the following confined steps:

- (1) Parties will be invited to advance any proposals to make modern awards easier to use while not reducing entitlements for award-covered employees. These proposals will be confined to the most commonly-used modern awards, namely:
 - *General Retail Industry Award 2020* [[MA000004](#)]
 - *Social, Community, Home Care and Disability Services Industry Award 2010* [[MA000100](#)]
 - *Hospitality Industry (General) Award 2020* [[MA000009](#)]
 - *Fast Food Industry Award 2010* [[MA000003](#)]
 - *Restaurant Industry Award 2020* [[MA000119](#)]
 - *Children's Services Award 2010* [[MA000120](#)]
 - *Clerks—Private Sector Award 2020* [[MA000002](#)]
- (2) Following the receipt of any such proposals, interested parties will be given an opportunity to file written submissions in response.
- (3) The Commission will convene conferences of interested parties in order to consider and discuss any such proposals and any submissions in response.
- (4) The final report of the review will assess the merits of any proposal advanced and may recommend possible next steps if parties seek variations to modern

awards, or propose that the Commission takes steps on its own motion to vary awards.

[11] I will publish, before the end of this month, a draft timetable for the conduct of the review. I will then conduct a directions hearing to allow interested parties to comment upon the draft before the timetable is finalised.

[12] The Commission has established a new major case webpage where all documents relating to the review will be published. Interested parties are encouraged to subscribe to the dedicated subscription service called '[Modern Awards Review 2023-24](#)' to receive updates.

PRESIDENT