



STATEMENT

Fair Work Act 2009

s.158—Application to vary or revoke a modern award

Australian Hotels Association

(AM2021/73)

Hospitality industry

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER BISSETT

MELBOURNE, 20 SEPTEMBER 2022

Application to vary modern award – Schedule J—Loaded Rate Arrangement – Hospitality Industry (General) Award 2020 – variation to J.5.1 and J.5.2.

Background

[1] [Schedule J](#)¹ of the *Hospitality Industry (General) Award 2020* (Hospitality Award) provides for the payment of loaded rates to full-time employees classified at Level 3 or above in satisfaction of the requirement to pay overtime, penalty rates (except public holidays penalties) and the split shift allowance.

[2] During the hearing of the application which resulted in the insertion of the loaded rates into the Hospitality Award, the United Workers' Union (UWU) submitted that the loaded rate percentages would need to be recalibrated each year to deal with any potential increase to the split shift allowance flowing from the Annual Wage Review (AWR).

[3] In response to that issue, we indicated that Commissioner Bissett would facilitate discussions amongst interested parties following the publication of the 2021-22 AWR decision about whether the loaded rates in Schedule J required adjustment to ensure that employees are not worse off.

[4] Following a public conference, on 25 August 2022 Commissioner Bissett issued a Report to the Full Bench setting out the views of interested parties and consensus position reached about whether the loaded rates in Schedule J required adjustment to ensure that employees are not worse off.

¹ Previously Schedule K

[5] On 26 August 2022 we issued a statement² (*August 2022 statement*) addressing the parties' proposed solution to the loaded rates issue. A copy of Commissioner Bissett's Report to the Full Bench was attached to our *August 2022 statement*.

[6] At [8] of our *August 2022 statement* we noted that Commissioner Bissett's Report stated:

[15] Arising from this review it is proposed that the rates be recalibrated such that the Level 3, 40 hour, Monday to Friday rate only increase from 110.20% to 110.30% and that clauses J.5.1 and J.5.2 be amended as per Schedule A.

[16] As the determination issued in the Annual Wage Review 2021–22 will commence operation on 1 October 2022, the Full Bench may consider that the determination in this matter should come into effect on 2 October 2022 to avoid any confusion as to the timing of the adjustments.'

[7] At [10] of our *August 2022 statement* we expressed a *provisional* view that the Hospitality Award should be varied in the terms set out in Commissioner Bissett's Report. A draft determination giving effect to the proposal and our *provisional* view was published with our *August 2022 statement*.

Conclusion

[8] At [11] of our *August 2022 statement* we invited interested parties to file any submissions opposing our *provisional* view set out at [10] by **4pm on 9 September 2022**. Parties were informed that, in the absence of any opposition, we would confirm our *provisional* view and the variation would be made in the terms set out in the draft determination, operative 2 October 2022.

[9] No comments were received regarding our *provisional* view or the draft determination. Accordingly, we confirm our *provisional* view set out at [10] of our *August 2022 statement*. We are satisfied that the variation proposed is necessary taking into account the s.134 considerations of the Act. The variation will ensure that the modern award provides a fair and relevant minimum safety net of terms and conditions required, ensuring that Level 3 employees are not worse off when using the provisions contained in Schedule J.

[10] A final variation determination will be issued to give effect to the amendments set out above. The operative date for the determination will be 2 October 2022.

PRESIDENT

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² [\[2022\] FWCFB 162](#)