

**OFFICIAL**



**The Hon Christian Porter MP**  
Attorney-General  
Minister for Industrial Relations  
Leader of the House

9 DEC 2020

The Hon Justice Iain Ross AO  
President  
Fair Work Commission  
PO Box 1994  
MELBOURNE VIC 3001

Dear Justice Ross

A handwritten signature in blue ink, appearing to be 'C Porter', written over the name 'Justice Ross'.

Following the conclusion of the industrial relations reform working group process, as discussed with you on 17 November 2020, I am writing to express the Government's view that in the extraordinary circumstances that have been caused by the COVID pandemic that it would be in Australia's economic best interest for the Fair Work Commission to use its powers under s.157(3)(a) of the *Fair Work Act 2009* (the Act) to undertake a process to ensure several priority modern awards in sectors hardest hit by the pandemic be amended. The process would be envisaged, if you considered it appropriate, to maintain a focus on key changes that could potentially support Australia's economic recovery. The Government would obviously provide every available assistance to ensure the timely and comprehensive conduct of this process.

The role of the Commission in considering evidence from employees, employers and other parties against the modern award objectives in the Act is essential to maintaining a fair and relevant modern award system. Together with temporary changes to the *Fair Work Act 2009* (the Act) introduced by the Government as part of the JobKeeper scheme, the Commission's recent expedited response has already provided business and workers with critical short term flexibility to manage the impacts of the pandemic. However, the Government is strongly of the view that the Commission has an important further and immediate role to play to assist in the process of developing reform to assist the future economic recovery which is now underway.

As outlined in your Draft Award Flexibility Statement of 31 August 2020, it is likely the direct economic and social impacts of the pandemic will be felt for some time. This means there will be further need for sensible flexible work arrangements to assist employers and employees in adapting to the changed conditions and to support the recovery. Particularly, in key awards corresponding to those sectors of the Australian economy hardest hit and which require the greatest assistance to survive, grow and employ.

This assessment aligns with the feedback the Government has received from stakeholders that businesses continue to need reasonable flexibility to support an increasingly agile approach to their operations as they contribute to the economic recovery in unprecedented dynamic and



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still evolving economic conditions. Increasing the flexibility and efficiency of the industrial relations system, while maintaining appropriate safeguards, will help support economic recovery following the COVID-19 pandemic and encourage employment growth as part of the economic recovery.

Stakeholders have identified that a considered pathway to the following award-related measures could prove critically important for providing businesses in the most distressed part of the economy with the confidence to increase hiring during the recovery:

1. Potentially simplified pay arrangements in the form of ‘loaded rates’ and/or ‘exemption rates’ designed to reduce the cost of administrative burden and address concerns about perceived risks arising from existing pay rate complexities and complexity risks that may lead to, particularly small business, mistakenly underpaying employees. While ultimately any design of loaded rates would be up to the discretion of the Commission, it is the Government’s view that these rates may be optimally structured in a way that ensures workers are not financially worse off over time, that they are available on an opt-in basis by agreement between the employee and employer with either party being able to opt out with appropriate notice.
2. Further streamlining of present classification structures so that they are clearer, easier to understand and simpler to apply. For example, I have been made aware that potential exists in several awards with a high level of award reliance (in key distressed industry sectors), including the General Retail, Hospitality, Restaurants and Registered Clubs Awards for the number of classifications to be reduced substantially by a broad-banding exercise with no reductions in pay and minimal increases in pay accompanied by greater variety and higher value work.

As noted in our previous discussions, the Government is able to support the Fair Work Commission in sourcing evidence, economic data and other material it needs in order to properly conduct this process.

While the Government is currently preparing legislation to implement measures that were the subject of working group discussions and negotiations, my view is that consideration of these two proposals set out above would be best undertaken by the Commission under its existing authority to vary modern awards.

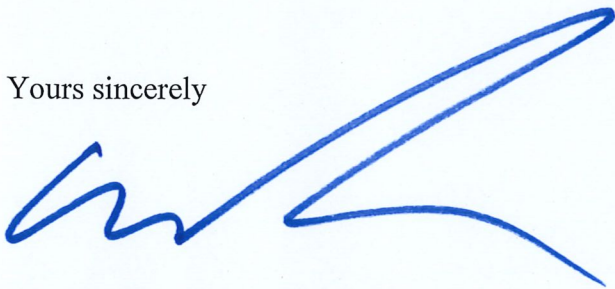
A Commission process would also provide parties and the Commonwealth with an opportunity to make submissions providing relevant statistical labour market and economic data that support the case for these changes. I envisage that these submissions would focus on the need for:

- changes to be made in the first instance to key awards in distressed industry sectors – namely the *General Retail Industry Award 2020*, the *Hospitality Industry (General) Award 2020*, the *Restaurant Industry Award 2020*, and the *Registered and Licenced Clubs Award 2010* – to maximise the benefits of increased flexibility as the economy recovers.
- any changes to simplify pay arrangements or classifications being available on an ‘opt in’ basis, to avoid imposing unnecessary changes on businesses that do not wish to adopt them,

- providing that payment by loaded rates are subject to agreement between employers and employees as a protection against disadvantage
- administrative simplicity, and the need to avoid the complex process requirements that have caused significant difficulty in relation to annualised salary arrangement, and
- changes to be made as expeditiously as possible, preferably no later than 31 March 2021.

The Government continues to see active support to business and workers as an important underpinning of economy recovery. The Commission continues to play an important role in this process. I would be grateful if the above matters could be considered by you in the exercise of the Commission's powers.

Yours sincerely



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