



DECISION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—Plain language re-drafting—*Hair and Beauty Industry Award 2010* (AM2016/15)

Hair and beauty

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT HATCHER
COMMISSIONER HUNT

MELBOURNE, 2 AUGUST 2022

4 yearly review of modern awards – plain language redrafting – Hair and Beauty Industry Award 2010.

[1] On 4 July 2022 we issued a decision (*July 2022 decision*) addressing outstanding matters in relation to the plain language redrafting process for the *Hair and Beauty Industry Award 2010*.

[2] In our *July 2022 decision* we considered submissions and submissions in reply from interested parties regarding outstanding items requiring resolution from the Agenda for the Hair and Beauty Award conference dated 11 February 2021 (Agenda). These included items 8, 9, 10, 15, 16, 20, 22, 23, 25, 26, 27, 28, 29, 30, 32, 33, 38, 40, 41, 43, 46, 47, 49, 50, 54, 55, 56, 58, 59, 61, 63, 64, 65 and 66.

Matters resolved

[3] In our *July 2022 decision* we confirmed that the following items from the Agenda were resolved: 8, 9, 10, 16, 30, 22, 23, 25, 26, 27, 28, 29, 32, 33, 38, 40, 41, 43, 46, 47, 49, 50, 54, 56, 61, 65 and 66. Items 15, 20 and 55 were withdrawn.

[4] We additionally considered and resolved 3 new items not included in the Agenda. These concerned clause 12.9 of the current award regarding the conversion of existing employees to part-time employment, clause 12.8 of the current award regarding award entitlements for part-time employees, and proposed definitions in clause 18.6(a) of the PLED for ‘hairdressing trainee’ and related terms.

[5] We also noted a number of other changes that would be made to the PLED. These included changes flowing from the Annual Wage Reviews of 2020–21 and 2021-2022, the

Casual terms award review (AM2021/54), the overtime for casuals matter (AM2017/51), the penalty rates for casual employees matter (AM2017/40), and the cessation in the current award of Schedule X—Additional Measures During the COVID-19 Pandemic. It also included a change to clause 11.2 of the PLED to be consistent with the approach outlined by the Full Bench in an earlier decision ([2014] FWCFB 9412) regarding the content of exposure drafts.

Outstanding matters

[6] In our *July 2022 decision* we expressed *provisional* views on the resolutions to items 57, 58, 59, 63 and 64.

Items 57 and 58 – clause 24.2—Additional paid leave for certain shiftworkers

[7] Items 57 and 58 concern the drafting of clause 24.2 of the PLED, which relates to additional paid annual leave for certain shiftworkers. Item 57 relates to the reference to ‘seven day’ in relation to the term ‘shiftworker’ and item 58 relates to the deletion of the clause in its entirety.

[8] At [199] in our *July 2022 decision* we expressed the *provisional* view that clause 24.2 should be deleted from the PLED. In light of this *provisional* view, we considered it unnecessary to deal with item 57. It was our *provisional* view that this resolved items 57 and 58.

Item 59 – clause 24.3—Annual leave loading

[9] Item 59 relates to concerns about the drafting of clause 24.3 of the PLED, the provision for payment made to employees during a period of annual leave.

[10] At [241] of our *July 2022 decision* we expressed our *provisional* view that clause 24.3 of the PLED (renumbered as 24.2 as a result of the deletion of current PLED clause 24.2) be amended to read:

‘24.2 Annual leave loading

- (a) In clause 24.2 the relevant weekend penalty amount is the applicable penalty rate prescribed by clause 23—Penalty rates for working on weekends, less the minimum hourly rate.
- (b) During a period of accrued annual leave an employee will receive a loading calculated for the period of leave on the employee’s minimum hourly rate specified in clause 17—Minimum rates or clause 18—Apprentice, trainee and graduate rates, as applicable.
- (c) The loading for a period of annual leave will be the greater of the following 2 amounts:
 - (i) 17.5% of the employee’s minimum hourly rate for all ordinary hours the employee would have worked if they were not on leave during the period, or

- (ii) the relevant weekend penalty amounts payable to the employee for all ordinary hours they would have worked on a weekend if they were not on leave during the period.’

[11] It was our *provisional* view, expressed at [242] of the *July 2022 decision*, that this amendment resolved item 59 and other related drafting issues.

Items 63 and 64 – clauses 24.7(a) and 24.9(d)—Excessive leave accrual

[12] Item 63 relates to the reference to clause 24.2 at clauses 24.7(a) and 24.9(d) of the PLED and consequential amendments flowing from the proposal to delete clause 24.2 of the PLED.

[13] Noting our *provisional* view at [199] of the *July 2022 decision* that clause 24.2 of the PLED should be deleted, we expressed at [245] our *provisional* view that the words ‘(or 10 weeks’ paid annual leave for a shiftworker, as defined by clause 24.2)’ should be deleted from clause 24.7(a) and the words ‘(or 5 weeks’ paid annual leave for a shiftworker, as defined by clause 24.2)’ should be deleted from clause 24.9(d) of the PLED. It was our *provisional* view that this resolved items 63 and 64.

Conclusion

[14] At [265] of our *July 2022 decision* we invited interested parties to make any submissions regarding our *provisional* views set out at [199], [241]–[242] and [245] by **4pm on 15 July 2022**. Parties were informed that any contested issues in respect of our *provisional* views and the finalisation of the variation determination would be determined on the papers.

[15] We received two submissions in response to our direction. The responses were received from the Australian Industry Group (Ai Group) and the Shop, Distributive and Allied Employees’ Association (SDA). The Ai Group supported our *provisional* views and the SDA advised that it had no further submissions to make.

[16] Having considered these submissions, we confirm our *provisional* views as set out at [199], [241] – [242] and [245] of our *July 2022 decision*.

[17] Items 57, 58, 59, 63 and 64 are resolved.

[18] This finalises the plain language redrafting process for the Hair and Beauty Industry Award.

[19] A final variation determination will be issued to give effect to the amendments set out above, as well as those determined in our *July 2022 decision*. We have made some other minor changes which will also be included.¹ The determination will also include a variation to clause 21.4(c) to remove the reference to ‘Statewide Superannuation Trust’ and to insert in lieu thereof ‘Hostplus’. This variation will apply to this award the reasoning and conclusion of the decision

¹ At clause 2, correcting first definition of Table 7 to Table 6 and deleting duplicate definitions of Table 7; at clause 7.1, Table 1, correcting reference to 23.1 to 23.3.

of Commissioner O'Neill of 7 July 2022² in respect of a number of other awards regarding the merger of the Statewide Superannuation Trust and Hostplus superannuation funds.

[20] The operative date for the variation determination will be 9 August 2022.

PRESIDENT

Printed by authority of the Commonwealth Government Printer

<MA000005 PR744117>

² [\[2022\] FWC 1725](#)