



REPORT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards

(AM2014/269)

FUNERAL INDUSTRY AWARD 2010

[MA000105]

Funeral industry

JUSTICE ROSS, PRESIDENT

MELBOURNE, 31 MARCH 2017

4 yearly review of modern awards – Funeral Industry Award 2010.

[1] A conference in relation to the review of the *Funeral Industry Award 2010* (Cemetery Award) was held in Sydney on 29 March 2017 to discuss the [summary of submissions](#) (technical and drafting issues) published on 8 March 2017. The transcript of the conference proceedings is available on the Review website ([AM2014/269](#)). The following parties were in attendance at the 29 March 2017 conference:

- Australian Business Industrial and the NSW Business Chamber (ABI)
- Australian Federation of Employers and Industry (AFEI)
- United Voice
- The Australian Workers' Union (AWU)

[2] The following items in the summary were discussed at the 29 March 2017 conference:

- Item 1: The parties were advised that this issue is before the Group 3 Full Bench and it will be determined by this Bench and applied across the awards generally.
- Item 2: In response to the question raised by the Commission regarding definitions of 'arranging officer' and coffin maker' the parties agreed that the definitions can be deleted. The exposure draft will be varied accordingly.
- Item 3: This provision is contained as a discrete clause in all Group 4 Exposure Drafts in accordance with the plain language principles. The provision will be retained and parties will have an opportunity to make a further submission after the revised exposure draft is published.

- Item 4: It was decided that the exposure draft will be updated to incorporate a reference to clause 18.4(a) in the table at clause 7.2.
- Item 5: ABI object to the removal of the words ‘on any or all days’ and ‘inclusive’ in the exposure draft. It was noted that there was no intent to change the meaning of the clause when it was re-drafted. The wording in the current exposure draft will be retained and parties will have an opportunity to make a further submission after the revised exposure draft is published.
- Items 6, 7 and 8: The parties clarified that there is no dispute in relation to this issue.
- Item 9: It was agreed that no schedule relating to School Based Apprentices is required. The Schedule will be removed from the exposure draft.
- Item 10: There is disagreement between the parties as to whether the uniform allowance is to be paid to all employees (full time, part time and casuals), or only to full time employees. The current award and the exposure specify that the allowance is only to be paid to full-time employees. As this is a substantive claim, the AWU are to advise the Commission by **Friday 7 April 2017** whether it intends to pursue a claim in relation to the issue. Draft directions are to be filed outlining how the matter should proceed. The issue could be dealt with on the papers, if parties agree to such a course.
- Item 11: Clause 18.4(c) of the exposure draft will be updated to read ‘changes to an employee’s regular roster or ordinary hours of work will be subject to Clause 27 – Consultation about changes to rosters or hours of work’ to clarify that it is not a requirement in circumstances where there is a ‘one-off’ roster change.
- Item 12: There is dispute among the parties as to the phrase ‘applicable rate’ which is used in the current award and the exposure draft. The dispute is around how the overtime allowance is calculated (whether it be from the shift rate or the minimum hourly rate). Parties are asked to file further submissions on the issue once the revised exposure draft is published. The submissions filed are to replace current submissions on the issue. With the agreement of the parties, the Full Bench will deal with the issue on the papers. Submissions are to be filed no later than **4.00 pm on Wednesday 19 April 2017**.
- Item 13: The word ‘for’ in clause 18.6(a) will be deleted in the revised exposure draft. This is to correct a grammatical error in the exposure draft.
- Item 14: It was decided that the second line of clause 19.1(b) in the exposure draft would be amended to read: *‘The employee will be paid a minimum of one hour’s pay at the applicable overtime or penalty rate specified in either clause 19.1(a) or clause 20.1 on each occasion the employee is recalled to work.’*
- Items 15 and 16: there is a dispute between the parties as to the proper construction of the provisions in question. It was decided that the exposure draft

would remain unchanged at this stage. Parties are provided with a further opportunity to make submissions on the issue and any submissions filed will replace any material filed to date. Unless any party proposes a different course, the Full Bench will deal with the issue on the papers.

- Items 17 and 18: There is dispute about minimum engagement on public holidays and the interaction of clauses 20.1(a)(i) and 201.(b) with clause 10.5 and 11.3. The AWU are to advise the Commission by **Friday 7 April 2017** whether it intends to pursue a claim relating to the minimum engagement for full time employees. They are to file a set of draft directions outlining how the matter should proceed. The parties are encouraged to have discussions among themselves in relation to the issue.
- It was clarified that in clause 19.1(c) of the exposure draft there is an incorrect reference to clause 16.1. The reference should be to clause 15.1. The exposure draft will be updated.

Next steps

[3] A revised Exposure Draft will be published on the Commission's website. Parties are asked to make submissions on the revised Exposure Draft by no later than **4.00 pm on Wednesday 19 April 2017**.

[4] The AWU are to advise the Commission by **Friday 7 April 2017** whether it intends to pursue a claim relating to the minimum engagement for full time employees.

[5] The AWU are to advise the Commission by **Friday 7 April 2017** whether it intends to pursue a claim relating to the substantive issue at 16.3(c) of the exposure draft (uniform allowance).

PRESIDENT

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