



STATEMENT

Fair Work Act 2009

s.157—FWC may vary etc. modern awards if necessary to achieve modern awards objective

Expense-related allowances 2022

(AM2022/12)

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT CATANZARITI
COMMISSIONER HAMPTON

MELBOURNE, 17 JUNE 2022

Adjustment of expense-related allowances

[1] On 15 June 2022, the Expert Panel (the Panel) for the Annual Wage Review 2021–2022 issued its decision to increase the National Minimum Wage and modern award minimum wages.¹

[2] The Panel determined that exceptional circumstances warranted different operative dates for different groups of modern awards.²

[3] The variation determinations in respect of the following awards will come into operation on 1 October 2022:

- *Aircraft Cabin Crew Award 2020*
- *Airline Operations – Ground Staff Award 2020*
- *Air Pilots Award 2020*
- *Airport Employees Award 2020*
- *Airservices Australia Enterprise Award 2016*
- *Alpine Resorts Award 2020*
- *Hospitality Industry (General) Award 2020*
- *Marine Tourism and Charter Vessels Award 2020*
- *Registered and Licensed Clubs Award 2020*
- *Restaurant Industry Award 2020.*

[4] The variation determinations for all other modern awards will come into operation on 1 July 2022.

¹ [2022] FWCFB 3500

² *Ibid* at para. 455.

[5] Section 292(1) of the Fair Work Act 2009 (Cth) (the Act) requires that the variation determinations giving effect to any adjustment of ‘modern award minimum wages’ be published before 1 July in the next financial year. Accordingly, the wage determinations for all awards will be published before 1 July 2022, irrespective of their operative date.

[6] There are no similar requirements under the Act for the publication of allowance determinations (the instruments giving effect to the adjustment of the expense-related allowances of an award), which the Commission publishes separately.³ However, s. 149 of the Act provides for the automatic variation of allowances to coincide with the variation in modern award minimum wages.

[7] Consistent with s.149 the method of adjustment of expense-related allowances is provided for in a standard clause incorporated into most modern awards.⁴ Clause C.2.2 of the Retail Award at is a typical example of the standard clause:

‘C.2.2 Adjustment of expense-related allowances

(a) At the time of any adjustment to the standard rate, each expense-related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.’

[8] The standard clause provides that the expense-related allowances are adjusted by positive movements in the applicable CPI figure between its most recent figure and when the allowance was last adjusted. This adjustment is triggered when an award’s standard rate is varied, through an annual wage review or otherwise.⁵

[9] A Statement issued by the President of Fair Work Australia in May 2010 formally outlined the process for adjusting expense-related allowances in modern awards for the Annual Wage Review 2009–10, referring to the standard clause above.⁶ It also indicated that draft variations to the expense-related allowances would be published in advance of 1 July for the parties to consider.⁷

[10] Subsequent Annual Wage Reviews have largely followed the same process, however, the adjustment of expense-related allowances in the Annual Wage Review 2019–20 (2019–20 Review) and Annual Wage Review 2020–21 (2020–21 Review) departed from previous reviews in terms of their update and when the expense determinations were published.

³ The Commission issues the determinations varying the expense-related allowance of modern awards as a result of annual wage reviews under the powers of s.157(1) of the Act.

⁴ Some of the enterprise and State reference public sector modern awards may not have the standard clause incorporated, however, their expense-related allowances are adjusted in the same manner nonetheless. The standard clause is also not contained in modern awards which do not have an expense-related allowance.

⁵ Also see [2010] FWA 3857 at paras 1, 3–4.

⁶ [2010] FWA 3857 at paras 1, 3.

⁷ [2010] FWA 3857 at paras 6–7.

[11] In the 2019–20 Review⁸ and 2020–21 Review⁹, the Panel determined that exceptional circumstances warranted a different operative date for the modern award wage increase across different awards. In the 2020–21 Review, the Panel decided that the increase to the *General Retail Industry Award 2020* (Retail Award) would be delayed to 1 September 2021, while the operative date for certain awards outlined at [298] of the decision was delayed to 1 November 2021.¹⁰ The operative date for all other awards was 1 July 2021.

[12] In the 2020–21 Review the methodology and timing for the adjustment of the expense-related allowances for certain awards were outlined in a Statement published on 17 June 2021.¹¹ The expense-related allowances in the Retail Award were adjusted using the June 2021 quarter CPI data while the expense-related allowances for certain other awards set out at [3] of the Statement¹² were adjusted using the September 2021 quarter CPI data. The expense-related allowance determinations for these awards were published on 23 August 2021 and 30 October 2021 respectively.

[13] We have decided to follow the same approach this year for the awards at [3] above.

[14] The expense-related allowances in those modern awards subject to the 1 July 2022 wage adjustment will be adjusted using the March 2022 quarter CPI data.

- Draft expense-related allowance determinations will be published next week.
- Interested parties will be required to submit any corrections or amendments by no later than 5pm on Friday 24 June 2022 to amod@fwc.gov.au.

[15] The expense-related allowances for the awards set out at [3] will be adjusted using the June 2022 quarter CPI data. This data are due to be released on 27 July 2022.

- Draft expense-related allowances will be published on 12 August 2022
- Interested parties will be required to submit any corrections or amendments by no later than 5pm on Friday 19 August 2022 to amod@fwc.gov.au.

PRESIDENT

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⁸ Majority decision in [2020] FWCFB 3500 at para. 466.

⁹ [2021] FWCFB 3500 at para. 280.

¹⁰ Ibid at paras 298–299.

¹¹ [2021] FWCFB 3497.

¹² Ibid.