DECISION

Fair Work Act 2009
s.156—4 yearly review of modern awards

4 yearly review of modern awards—Plain language redrafting—*Fast Food Industry Award 2010*

(AM2016/15)

VICE PRESIDENT HATCHER SYDNEY, 8 JUNE 2022

4 yearly review of modern awards – plain language redrafting – Fast Food Industry Award 2010

Introduction

[1] This decision concerns the finalisation of the plain language redrafting of the *Fast Food Industry Award 2010* (Fast Food Award). In a decision issued by the Full Bench in this matter on 1 April 2022[1] (April decision), the following issues were identified as outstanding:

(1) The Full Bench stated the *provisional* view at paragraph [156] that clause 22.2 of the Plain Language Exposure Draft (PLED) published on 28 October 2020,[2] which concerns additional annual leave for certain shiftworkers, should be deleted. Clause 22.2 of the PLED is a redrafted version of clause 28.2 of the current Fast Food Award. Interested parties were invited to make written submissions in response to this *provisional* view.

(2) Associated with the foregoing, the Full Bench also stated the *provisional* view at paragraph [210] that the words "(or 10 weeks' paid annual leave for a shiftworker, as defined by clause 22.2)" in clause 22.6(a) of the PLED and the words "(or 5 weeks' paid annual leave for a shiftworker, as defined by clause 22.2)" in clause 22.8(d) of the PLED should be deleted. These provisions in the PLED are the equivalents of clauses 28.6(a) and 28.8(d) respectively of the current Fast Food Award.

(3) The Full Bench stated the *provisional* view at paragraphs [207]-[208] that clause 22.3 of the PLED, which concerns the annual leave loading, should be amended. Clause 22.3 is a redrafted version of clause 28.3 of the current Fast Food Award.

[1] [2022] FWCFB 48

[2] This and subsequent references are to the clauses as numbered in the 28 October 2020 version of the PLED. The numbering of relevant clauses remained unchanged in the 21 January 2021 and 18 February 2021 versions, but changed in the 4 April 2022 version because of other changes made to reflect the Full Bench's provisional views in the April decision.

Interested parties were invited to make written submissions in response to this *provisional* view.

(4) An "application" was filed by EPI Capital Pty Ltd (EPI) on 1 March 2022 to vary clause 27.1 of the Fast Food Award pursuant to s 160 of the *Fair Work Act 2009* (FW Act) to remedy alleged ambiguity or uncertainty. Clause 27.1 concerns rest breaks and meal breaks. The equivalent provisions in the PLED are contained in clause 14. EPI has conceded that it does not have standing under s 160(2) to make the "application" and has asked the Commission to consider making a determination on its own initiative, pursuant to s 160(2)(a), to address the identified ambiguity or uncertainty. Interested parties were invited to comment on the substance of EPI's "application" and whether any amendments should be made to clause 14 of the PLED.

[2] Paragraph [231] of the April decision referred to me for determination, on the papers, any contest concerning the *provisional* views referred to above, the EPI "application" and the finalisation of the variation determination. I will deal with the above issues in turn.

Issues 1 and 2 – annual leave provisions relating to certain shiftworkers

[3] Clause 22.2 of the PLED is drafted as follows:

22.2 Additional paid annual leave for certain shiftworkers

A shiftworker who is regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for 7 days a week is entitled to an additional week of paid leave under the NES. See section 87 of the Act.

[4] Clause 28.2 of the current Fast Food Award provides:

28.2 Definition of shiftworker

For the purpose of the additional week of annual leave provided for in the NES, a shiftworker is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for seven days a week.

[5] Clauses 22.6-22.8 of the PLED deal with excessive leave accruals. Clause 22.6(a) defines an "excessive leave accrual" as being "more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 22.2)". It effectively reproduces clause 28.6(a) of the current Fast Food Award. Clause 22.8(d) of the PLED provides (by reference to clause 22.8(b)) that an employee is not entitled to request by notice to the employer the taking of more than 4 weeks' paid annual leave "(or 5 weeks' paid annual leave for a shiftworker, as defined by clause 22.2)" in any period of 12 months. Clause 22.8(d) effectively reproduces clause 28.8(d) of the current Fast Food Award.

[6] The Australian Industry Group (Ai Group) had previously contended that clause 22.2 of the PLED should be deleted because the Fast Food Award does not contemplate the

performance of shiftwork, meaning that clause 22.2 had no work to do.[3] For the same reason, it contended that the references to shiftworkers in clauses 22.6(a) and 22.8(d) should also be deleted.[4] This was opposed by the Shop, Distributive and Allied Employees' Association (SDA) on the basis that, despite the award's silence regarding shiftwork, employees may be rostered in such a way that qualifies them as shiftworkers and that many fast food establishments operate on a "24/7" model which facilitates shiftwork.[5]

[7] The *provisional* view in the April decision concerning the deletion of clause 22.2 of the PLED was founded on the Full Bench's analysis at paragraphs [179]-[187] that the Fast Food Award does not currently contain any substantive shiftwork provisions. The *provisional* view thus necessarily involved implicit acceptance of the Ai Group's contention and a rejection of the SDA's submission in response.

[8] The only submissions received in response to the *provisional* view were from the Ai Group and the SDA. The Ai Group supports the *provisional* view. The SDA simply "*notes*" the *provisional* view and states that it does not resile from the submissions it has already made.

[9] The SDA submissions raise nothing new and, in particular, the SDA does not challenge the Full Bench's analysis in paragraphs [179]-[187] that there are no substantive shiftwork provisions in the Fast Food Award or attempt to demonstrate that the current clause 28.2 has application to anybody. In those circumstances, I see no basis to depart from the *provisional* views. Clause 22.2 and the references to shiftworkers in clauses 22.6(a) and 22.8(d) will be deleted from the PLED.

Issue 3 – annual leave loading

[10] Clause 28.3 of the Fast Food Award currently provides:

> **28.3 Annual leave loading**
>
> **(a)** During a period of annual leave an employee will receive a loading calculated on the wage rate prescribed in clause 17—Minimum weekly wages. Annual leave loading is payable on leave accrued.
>
> **(b)** The loading will be as follows:
>
> **(i) Day work**
>
> Employees who would have worked on day work only had they not been on leave—17.5% or the relevant weekend penalty rates, whichever is the greater but not both.
>
> **(ii) Shiftwork**

[3] [2022] FWCFB 48 at [154]

[4] Ibid at [209]

[5] Ibid at [155]

Employees who would have worked on shiftwork had they not been on leave—a loading of 17.5% or the shift loading (including relevant weekend penalty rates), whichever is the greater but not both.

[11] Clause 22.3 of the PLED is drafted as follows:

22.3 Annual leave loading

(a) An employee is entitled to an additional payment for accrued annual leave, calculated on the minimum hourly rate specified in clause 15—Minimum rates for the classification in which they are employed.

(b) The additional payment for the employee's ordinary hours of work when taking paid annual leave is as follows:

(i) Dayworkers

An employee who would have worked on day work only had they not been on leave must be paid the greater of either:

- the minimum hourly rate plus a loading of **17.5%** of the minimum hourly rate; or
- the relevant weekend penalty rate specified in clause 21.1.

(ii) Shiftworkers

An employee who would have worked on shift work had they not been on leave must be paid the greater of either:

- the minimum hourly rate plus a loading of 17.5% of the minimum hourly rate; or
- the relevant penalty rate specified in clause 21.1, including relevant weekend penalty rates.

NOTE: Section 90(2) of the Act contains provisions relating to an employee's entitlement to payment for any untaken paid annual leave when employment ends.

[12] In the April decision, the Full Bench's *provisional* view was that clause 22.3 should be amended to read as follows:[6]

22.3 Annual leave loading

(a) In clause 22.3 the **relevant weekend penalty percentage** is the applicable percentage of the minimum hourly rate specified in clause 21, less 100%.

[6] Ibid at [207]

(b) During a period of accrued annual leave an employee will receive a loading calculated on the employee's minimum hourly rate specified in clause 15—Minimum rates.

(c) The loading will be the greater of the following 2 amounts:

(i) 17.5% of the employee's minimum hourly rate for the ordinary hours the employee would have worked if they were not on leave, or

(ii) the relevant weekend penalty percentages of the employee's minimum hourly rate for the ordinary hours the employee would have worked on a weekend if they were not on leave.

[13] The Full Bench's *provisional* view concerning the redrafting of clause 22.3 of the PLED was based on four principal conclusions:

(1) The use of the expression "additional payment" in clause 22.3 of the PLED, rather than the appellation of "loading" in clause 28.3 of the current Fast Food Award, might give rise to an ambiguity or uncertainty, and accordingly there should be a reversion to the existing terminology to retain consistency with the FW Act.[7]

(2) There was a drafting ambiguity in the calculation of the loading in clause 22.3 of the PLED. Because the "relevant weekend penalty rate specified in clause 21.1" of the PLED is expressed as being either 125% or 150% of the minimum hourly rate (as distinct from a "loading" of 25% or 50%, as expressed in clause 25.5(b)-(d) of the current Fast Food Award), the comparison between these rates and the annual leave loading was no longer like with like and would lead to employees working weekends being unintentionally lead to significantly higher annual entitlements to payment for annual leave.[8] This problem would be resolved by the introduction of a definition of "relevant weekend percentage penalty" (as per the proposed new clause 22.3(a)). It was acknowledged that that a clause requiring the reader to deduct the minimum rate from the penalty rates and then compare the remainder to the annual leave loading would introduce some complexity into the award, but, on balance, it was considered that such a clause was the clearest way to express the entitlement to annual leave loading.[9]

(3) Because, as earlier discussed, the Fast Food Award contains no substantive shiftwork provisions, clause 22.3(b)(ii) of the PLED should be deleted as its retention might lead to confusion and uncertainty.[10] There should also be a consequential amendment to remove the reference to "dayworkers".[11]

[7] Ibid at [172]

[8] Ibid at [173]-[175]

[9] Ibid at [203]-[204]

[10] Ibid at [187]

[11] Ibid at [205]

(4) In response to a submission by the Ai Group that clause 22.3(b)(i) of the PLED departed in a substantive way from clause 28.3 of the current Fast Food Award, in that it prescribed the amounts payable as hourly rates and appeared to require an hour-by-hour comparison and calculation as distinct from the calculation of a loading for an entire period of leave,[12] it was noted that paid annual leave may be granted in hourly components and taken for a period agreed between the employee and the employer. The prescription of amounts payable pursuant to clause 22.3(b) as hourly rates was consistent with the approach taken in other plain language awards and facilitated calculation of payment for periods of leave shorter than a week. However, clause 22.3 of the PLED was not consistent with other plain language awards or the current award in that it was not clear that the amounts referenced at clause 22.3(b) are to be calculated by reference to the entire period of leave taken.[13] The redrafted clause would amend the comparison required to more closely reflect to terms of the current award,[14] and this would resolve the issue raised by the Ai Group.[15]

[14] The only submissions received in response to the *provisional* view were from the Ai Group[16] and the SDA.[17] The Ai Group supports the *provisional* view. The SDA's submissions do not, in terms, respond to the redrafted clause 22.3 which was the subject of our *provisional* view. Instead, the SDA takes issue with conclusions (3) and (4) above.

[15] With respect to conclusion (3), the SDA "*notes the position of the Full Bench*" and states that it does not resile from its earlier submissions already made. This does not advance the matter any further, and conclusion (3) is affirmed.

[16] In relation to conclusion (4), the SDA again states that it does not resile from its earlier submissions. Those submissions, as summarised in the April decision, were as follows:

> "[191] The SDA submits that Ai Group's further submissions deal with an understanding of annual leave loading as being judged in total at the end of the period. They submit that Ai Group's approach seems to presume that annual leave can only be taken as a specific period. They submit that that requirement does not appear in the current award or in the FW Act, which provides at s.88(1) that paid annual leave may be taken for a period agreed between the employee and the employer and at s.88(2) that the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.
>
> [192] The SDA submits that the approach at s.88 of the FW Act is not novel, as s.236(2) of the *Workplace Relations Act 1996* (Cth) provided: 'To avoid doubt, there is no maximum or minimum limit on the amount of annual leave that any employer may

[12] Ibid at [188]-[190]

[13] Ibid at [196]

[14] Ibid at [205]

[15] Ibid at [208]

[16] Submission – Australian Industry Group (fwc.gov.au)

[17] Submission - Shop, Distributive and Allied Employees Association (fwc.gov.au)

authorise an employee to take.' They state that annual leave may be taken in any period agreed between the employer and employee, with annual leave often being granted in hourly components. Consequently, any loadings should also accrue hourly.

[193] The SDA disagrees with Ai Group's further characterisation of clause 22.3 of the PLED as a substantive variation to the terms of the award. They contend that the provision the subject of Ai Group's challenge is also found in the General Retail Award and that provision remains unchanged from the initial plain language exposure draft published in 2017. They submit that that provision was not challenged by any party and does not appear to have been raised in any of the Commission's summary documents. They contend that this can only mean that the Commission rightly decided in their favour in respect of the retail industry and should conclude the same regarding the fast food industry.

[194] The SDA submits that s.235(1) of the *Workplace Relations Act 1996* (Cth) provided that if any employee takes annual leave, they must be paid a rate for each hour (pro-rated for part hours) of annual leave that is no less than the rate that, immediately before the period begins, in the employee's basic periodic rate of pay (expressed as an hourly rate). They submit that Ai Group is effectively seeking to make late submissions regarding a settled matter for a substantive change to the way annual leave loading is applied in the fast food industry and this should be rejected.

[195] The SDA submits that annual leave loading was initially conceived as a mechanism to ensure that employees did not suffer a financial detriment while on leave and, in this context, it becomes clear that the purpose of the provision providing that either the weekend penalty rates or the 17.5% loading applies is to ensure that employees do not suffer a detriment in respect of their weekend penalty rates. However, to exclude the 17.5% from other days or hours taken may result in an employee suffering a detriment on those days. They submit that, as such, the submissions of Ai Group, together with their proposed wording, should be rejected."

[17] The SDA now submits that:

- the "*underpayments crisis*" by even major employers is a fact the Commission can take note of;
- for the Full Bench to depart from the settled wording accepted in the *General Retail Industry Award 2020* (Retail Award) to introduce even more complex language and an entirely new process of calculation is entirely counterintuitive to the aims of the plain language redrafting process;
- as noted at paragraph [202] of the April decision, the proposed redrafting originated in submissions made by the Ai Group with respect to the plain language redrafting of the *Clerks—Private Sector Award 2020* (Clerks Award);
- the fast food industry differs fundamentally from that covered by the Clerks Award, particularly regarding work patterns;

- the fast food industry aligns very closely with the retail industry and for this reason, the wording adopted in the Retail Award is more appropriate (while maintaining the SDA's position on the advantage in using the term "loading" rather than "additional payment");

- the fast food industry employs a disproportionate number of vulnerable Australians, whether due to age or other socio-economic factors, and to place these workers at risk of underpayment as a result of a process meant to protect them is counterproductive.

[18] Stripped of its rhetoric, the gravamen of the SDA's submission seems to be that the proposed redraft of clause 22.3 would introduce a new process of calculation, expressed in complex language, and thus unnecessarily departs from the position already established through the plain language process in clause 28.3 of the Retail Award. This is rejected. The method of calculation espoused by the SDA and referred to in paragraphs [191]-[195] of the April decision quoted above appears to be that the loading is to be calculated for each hour of leave taken, rather than by reference to the entire period of leave taken. Thus, if an hour of leave is one which, if it had been worked, no weekend penalty rate would be payable, the 17.5% loading is to be paid for that hour. Alternatively, if an hour of leave would have attracted a weekend penalty rate (of either 25% or 50% under clause 25.5 of the Fast Food Award) if worked, then the weekend penalty is payable.

[19] No textual or historical support for this novel method of calculation has been identified by the SDA in any of its submissions. It was rejected by the Full Bench in the April decision, which made it clear in paragraph [196] that the loading is calculated by reference to the entire period of leave taken, notwithstanding that the clause (as it was then worded)[18] did not make that clear. The correct method of calculation is that, once the period of leave to be taken is identified, the higher of 17.5% of the employee's minimum hourly rate for all ordinary hours of work in that period, or the amount of the weekend penalty rates which would have been earned if the hours in the period of leave had been worked, is paid. This is a simple calculation which does not require the complex hour-by-hour approach espoused by the SDA.

[20] Contrary to the SDA's submissions, the annual leave loading clause in the Retail Award, which the SDA evidently prefers (except for its use of the term "additional payment" rather than "loading"), does not provide for the method of calculation it favours. The chapeau to clause 28.3(c) of the Retail Award makes it clear that the "greater of" comparison required involves a single calculation of a single "additional payment", not a calculation and comparison for every hour of leave to be taken. The 17.5% amount, or the alternative of penalty rates, are both expressed as referable to "all ordinary hours in the period [of paid annual leave]" (underlining added), not each individual hour in the period of leave. In this respect, it must be said that the Retail Award is expressed more clearly than redrafted of clause 22.3 of the PLED the subject of the *provisional* view in paragraph [207] of the April decision. For that reason, my *provisional* view is that I should depart from the Full Bench's *provisional* view and modify the redraft of clause 22.3 as follows, in order to remove any doubt as to the correct method of calculation required:

22.3 Annual leave loading

[18] Clause 22.3(b) was amended in the 4 April 2022 version of the PLED to reflect the Full Bench's provisional view at paragraph [207] of the April decision.

(a) In clause 22.3 the **relevant weekend penalty ~~percentage~~ amount** is the applicable penalty rate prescribed by clause 21 for working on weekends, less the minimum hourly rate ~~percentage of the minimum hourly rate specified in clause 21, less 100%~~.

(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 15—Minimum rates.

(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 ~~the~~ ordinary hours the employee would have worked if they were not on leave during the period, or

(ii) the relevant weekend penalty ~~percentages~~ amounts ~~of the employee's minimum hourly rate for the ordinary hours~~ payable to the employee for all ordinary hours they would have worked on a weekend if they were not on leave during the period.

[21] For completeness, I reject the SDA's submissions that any particular approach taken to the drafting of clause 22.3 can be related to any "*underpayments crisis*" or would "*place … vulnerable workers at risk of underpayment*".

[22] I have noted, however, the SDA's submission concerning the different drafting of the annual leave loading provisions in the Fast Food Award, the Retail Award and the Clerks Award. There appears to me to be no good reason why the annual leave loading provisions in these awards and perhaps other awards, which are all intended to have the same effect, should be drafted differently. This issue cannot be resolved in the present matter, but it may be addressed by the Commission in a separate process in the future.

Issue 4 – The EPI "application"

[23] The EPI "application" (which is more in the nature of a submission since, as earlier stated, EPI concedes that it has no standing to bring an application to vary a modern award under s 160 of the FW Act) concerns clause 27.1 of the Fast Food Award, which provides:

27. Breaks

27.1 Breaks during work periods

(a) Breaks will be given as follows:

Hours worked	**Rest break**	**Meal break**
Less than 4 hours	No rest break	No meal break
4 hours but less than 5 hours	One 10 minute rest break	No meal break

5 hours but less than 9 hours	One 10 minute rest break	One meal break of at least 30 minutes but not more than 60 minutes
9 hours or more	One or two 10 minute rest breaks, with one taken in the first half of the work hours and the second half of the work hours, two rest breaks will be given unless a second meal break is provided	One or two meal breaks of at least 30 minutes but not more than 60 minutes

(b) The timing of the taking of a rest break or meal break is intended to provide a meaningful break for the employee during work hours.

(c) An employee cannot be required to take a rest break or meal break within one hour of commencing or ceasing work. An employee cannot be required to take a rest break(s) combined with a meal break.

(d) The time of taking rest and meal breaks and the duration of meal breaks form part of the roster and are subject to any agreement reached under clause 12.2 regarding a part-time employee's regular pattern of work. An agreed variation pursuant to clause 12.3 or 12.5 may include a variation to the time of taking rest and meal breaks.

(e) Rest breaks are paid breaks and meal breaks are unpaid breaks.

(f) An employee cannot work more than five hours without a meal break.

[24] The equivalent provision in the PLED is clause 14, which is drafted as follows:

14. Breaks

14.1 Employees are entitled to rest and meal breaks in the following circumstances:

Table 2—Entitlements to rest and meal breaks

Hours worked per shift	**Rest breaks**	**Meal breaks**
Less than 4 hours	No rest break	No meal break
4 hours or more but less than 5 hours	One 10 minute paid rest break	No meal break
5 hours or more but less than 9 hours	One 10 minute paid rest break	One unpaid meal break of at least 30 minutes but not more than 60 minutes
9 hours or more	If 2 unpaid meal breaks are provided:	
	One 10 minute paid rest break	Two unpaid meal breaks of at least 30 minutes but not more than 60 minutes
	Or, if 2 unpaid meal breaks are not provided:	

	Two 10 minute paid rest breaks – one to be taken in the first half of the shift and one in the second half of the shift	One unpaid meal break of at least 30 minutes but not more than 60 minutes

NOTE: Rest breaks count as time worked. Meal breaks do not count as time worked.

14.2 The timing and duration of rest and meal breaks for part-time employees must be included in the roster and are subject to any agreement made under clause 10.3 regarding a part-time employee's regular pattern of work.

14.3 A variation agreed under clauses 10.5 and 10.7 for a part-time employee may include a variation to the time of taking rest and meal breaks.

14.4 When rostering rest and meal breaks, the employer must seek to ensure that the employee has meaningful breaks during work hours.

14.5 An employer cannot require an employee:

(a) to take a rest break or meal break within the first or the last hour of work; or

(b) to take a rest break combined with a meal break; or

(c) to work more than 5 hours without taking a meal break

[25] The basis for EPI's "application" is set out in paragraphs [222] and [224]-[225] of the April decision. In short, EPI contends that clause 27.1 of the current Fast Food Award is ambiguous or uncertain because it is unclear whether clause 27.1(a) prescribes merely minimum entitlements to breaks, or minimum and maximum entitlements to breaks such that giving any employee any break other than those set out at clause 27.1(a) would contravene the award. EPI proposes that clause 27.1 be amended by:

(1) deleting the words "Breaks will be given as follows:" and replacing them with the words, "An employee who works the number of hours in any one shift specified in the following table is entitled to the corresponding break or breaks:"

(2) deleting the row beginning "Less than 4 hours" from the table; and

(3) deleting the words "No meal break" from the table and replacing them with the words, "No meal break entitlement".

[26] The April decision invited submissions in relation to the substance of the EPI "application" and whether any amendments should be made to clause 14 of the PLED. Submissions were received from the Ai Group, the SDA and the Retail and Fast Food Workers Union Incorporated (RFFWUI).

[27] The Ai Group submits that it does not support the variations proposed by EPI and that it is not necessary to amend the PLED in relation to the issues raised by EPI. The Ai Group states that it is not aware of any issues arising in practice regarding whether clause 27.1 of the Fast Food Award prescribes the minimum or maximum duration of breaks, and no organisation of employers or employees or any other party covered by the award had raised any concerns which might warrant a variation to the award or the PLED in this regard. It also submits, in relation to EPI's second proposed variation above, that the second row of Table 2 in the PLED should be retained to make it clear that, for shifts of less than 4 hours in length, there is no entitlement to a meal or rest break.

[28] The SDA is also opposed to the amendments proposed by EPI which, it submits, are based on a perceived ambiguity that does not exist. It submits that the Fast Food Award prescribes the legal minimum and, as with all awards, more beneficial arrangements may be provided to employees by agreement such as a longer paid break. However, it submits, uncapped longer paid meal breaks pose the problem of the employer in effect providing for a split shift, which is not permitted by the Fast Food Award. The SDA submits that, in reality, some employers in fast food often struggle to provide any breaks at all, and "*[t]he concept that employers wish to provide employees additional breaks especially paid breaks for their benefit is, we submit, at best an academic point of discussion or at worst a fabrication*". The RFFWUI's submission makes essentially the same points as are made by the SDA.

[29] I do not consider that the EPI "application" raises any matter which requires amendment to clause 14.1 of the PLED. Consistent with ss 132 and 134(1) of the FW Act, the opening words of clause 14.1 make it clear that the clause provides for minimum employee entitlements for rest and meal breaks (subject to the prohibition on unpaid meal breaks extending beyond 60 minutes which, as the SDA correctly observes, prevents the establishment of split shift arrangements under the guise of extended meal breaks). These opening words in clause 14.1 of the PLED have been changed compared to the opening words of clause 27.1(a) of the current Fast Food Award, and are the same in effect as EPI's first proposed variation. Accordingly, there is no need to make the first variation in respect of the PLED. There is no good reason to make EPI's second variation in respect of Table 2 since I consider it to be useful to make clear that there is no provision for a rest or meal break for a shift of less than 4 hours' duration. As to the third variation, its purpose seems to be to allow for an employer, if it wishes, to roster unpaid meal breaks for shifts of less than 5 hours without any limit on their duration. This would indirectly allow the establishment of split shift arrangements for which the Fast Food Award does not currently provide. The variation will not be made.

Other matters raised by the SDA

[30] The SDA's submissions continue to agitate some other matters. These matters have either been determined to finality by the Full Bench or have already been addressed in the PLED, and it is not necessary therefore to consider them further.

Next steps

[31] A revised version of the PLED is published with this decision. The *provisional* view stated in paragraph [20] above concerning the drafting of clause 22.3 is *provisionally* incorporated in the PLED (with the clause renumbered as 22.2). In addition, the PLED

provisionally incorporates a revised definition of "*fast food industry*" in clause 4.2 consistent with the *provisional* view stated by a Full Bench in a statement published on 18 May 2022[19] (Statement).

[32] Interested parties are invited to provide submissions:

(a) in response to the *provisional* view expressed in paragraph [20] above;

(b) identifying any errors or omissions in any other part of the PLED (other than clause 4.2, which is the subject of a separate process arising from the Statement);

by **5:00 pm (AEST) on Friday, 24 June 2022**. Such submissions shall be sent to amod@fwc.gov.au. To be clear, this is not intended to provide a further opportunity to continue to agitate issues already determined.

[33] It is anticipated that the above process, and the separate process arising from the Statement concerning clause 4.2 of the PLED, shall result in the making of a determination varying the Fast Food Award in the terms of the finalised PLED in early July 2022, subject to and incorporating any changes in wage rates and allowances which result from the Annual Wage Review currently being conducted.

VICE PRESIDENT

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[19] [2022] FWCFB 76 at [13]