



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, 11 JULY 2022

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

[1] On 8 June 2022 I issued a decision concerning the finalisation of the plain language redrafting of the *Fast Food Industry Award 2010* (Fast Food Award).¹ In that decision, among other things, I expressed a *provisional view* (at [20]) concerning the drafting of the annual leave loading provision in clause 22.2 of the plain language exposure draft (PLED) for the Fast Food Award. Attached to the decision was a revised PLED which was intended to incorporate all matters dealt with in the decision, including the *provisional view* concerning clause 22.2. The decision directed interested parties to provide submissions in response to the *provisional view*, or submissions identifying any errors or omissions in any other part of the PLED (other than clause 4.2, which is being dealt with in a separate Full Bench process), by 24 June 2022.

[2] The only submission received in response to this direction was from the Australian Industry Group (Ai Group). In respect of the *provisional view* concerning clause 22.2, the Ai Group submitted that it supports the *provisional view*, but identified two minor drafting issues in clause 22.2(a) of the PLED. These were, it submitted:

- (1) Clause 22.2(a) defines “*relevant weekend penalty amount*”, whereas clause 22.2(c)(ii) refers to “*relevant weekend penalty amounts*”. Clause 22.2(a) could be more precisely drafted as follows: “*In clause 22.2 ~~the~~ a relevant weekend penalty amount is ~~the~~ an applicable penalty rate...*”.
- (2) The cross-reference to “*clause 21 – Penalty Rates*” is inconsistent with the *provisional view* at [20] of the decision, which contains the following cross-reference: “*clause 21 for working on weekends*”. The PLED should be amended to reflect the *provisional view* as expressed in the decision.

[3] I accept both of the Ai Group’s submissions. As to the first submission, the annual leave loading which would be required to be paid under clause 22.2 might consist of different

¹ [2022] FWC 1444

weekend penalty amounts payable for Saturdays and Sundays that fall within the period of leave taken (if these constitute the greater amount). Accordingly, the reference to “*the*” relevant weekend penalty amount and “*the*” applicable penalty rate in clause 22.2(a) may not be apposite. As to the second submission, the PLED did not accurately reflect the provisional view in [20] of the decision. Clause 22.2 will provide:

22.2 Annual leave loading

- (a) In clause 22.2 a **relevant weekend penalty amount** is an applicable penalty rate prescribed by clause 21—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 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 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.

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.

[4] The Ai Group’s submission also identifies four minor errors in the PLED. It is not necessary to set them out here; they will be rectified. Additionally, since Schedule X to the Fast Food Award ceased to operate after 30 June 2022, it will be removed from the PLED.

[5] In conjunction with this decision, a Full Bench has published a decision finalising the drafting of clause 4.2 of the PLED for the Fast Food Award.² A determination to give effect to the PLED which incorporates the matters determined in the Full Bench’s decision and this decision will be published in conjunction with this decision. The operative date for the determination will be 28 July 2022.

[6] This finalises the plain language redrafting process for the Fast Food Award.

² [2022] FWCFB 123



VICE PRESIDENT

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