

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Outline of Proposed Variations
Fast Food Industry Award 2010
(AM2014/267)

7 OCTOBER 2016



**4 YEARLY REVIEW OF MODERN AWARDS
OUTLINE OF PROPOSED VARIATIONS
AM2014/267 FAST FOOD INDUSTRY AWARD 2010**

1. The Australian Industry Group (**Ai Group**) refers to the Directions issued by President Justice Ross on 26 August 2016, requesting parties file a short submission confirming the substantive claims being pursued (**Directions**).
2. This outline is filed in accordance with the Directions. It identifies the substantive claims or variations that will be pursued by Ai Group in the *Fast Food Industry Award 2010* (**Award**) (Group 4F).
3. This outline provides:
 - A general description of the claim or variation sought; and
 - The type of case to be run and, where applicable, the anticipated number of witnesses to be called.
4. A draft variation determination for the *Fast Food Industry Award 2010* is filed with this submission.

Variations previously proposed to the Fast Food Industry Award 2010

5. On 2 March 2015, Ai Group filed an Outline of Proposed Variations to Group 3 and 4 Modern Awards, pursuant to a Statement issued by the Commission on 23 January 2015¹ (**2 March 2015 Outline**).
6. In its 2 March 2015 Outline, Ai Group proposed the following variations to the *Fast Food Industry Award 2010*:

¹ [2015] FWC 618

(a) **Coverage**

Due to emerging changes in the fast food industry, Ai Group may seek a variation to the coverage of the Award to avoid potential overlap with other awards.

(b) **Casual Employment**

Ai Group proposes that the minimum engagement periods for casual employees in clause 13.4 be 2 hours, instead of 3 hours.

(c) **Hours of Work**

Ai Group notes the ambiguity in the application of the evening penalty at clause 25.5(a)(ii) and proposes an end time of 5am.

The reference to “span of hours” in clause 25.5(b) is unnecessary and confusing. It should, therefore, be deleted.

(d) **Breaks**

Ai Group proposes that greater flexibility should exist in clause 27.1 to allow for the applicable 10-minute rest break to be taken as 2 x 5-minute rest breaks.

7. Ai Group confirms its position in relation to those claims as follows:

- **Coverage:** Ai Group does not intend to pursue this variation at this stage.
- **Casual Employment:** This matter was referred to and has been dealt with by a Full Bench as part of AM2014/197 (4 Yearly Review of Modern Awards – Casual Employment).
- **Hours of Work:**
 - (i) Ai Group intends to pursue a variation in relation to clause 25.5(a)(ii). This issue has not been dealt with as part of 4 Yearly

Award Review Matter No. AM2014/305 (Penalty Rates). Further detail in relation to this claim is set out below.

(ii) Ai Group intends to pursue a variation in relation to clause 25.5(b). Further detail in relation to this claim is set out below.

- **Breaks:** Ai Group intends to pursue a variation to allow the applicable 10-minute rest break to be taken as 2x5-minute rest breaks. Further detail in relation to this is set out below.

Confirmation of variations currently sought to the Fast Food Industry Award 2010

8. Ai Group now confirms that it seeks the following variations to the *Fast Food Industry Award 2010*. The variations being pursued include some outlined in its 2 March 2015 Outline, together with new claims not previously identified:

(a) Laundry Allowance (Clause 19.2(b))

Ai Group proposes that the laundry allowance at clause 19.2(b) of the Award be removed.

Ai Group will provide evidence in support of this claim, and anticipates calling 1 – 2 witnesses.

(b) Evening penalty end time (Clause 25.5(a)(ii))

Clause 25.5(a)(ii) states that a loading of 15% will apply “for ordinary hours of work after midnight”, however does not stipulate a time at which the evening penalty rate ceases to apply. Ai Group intends to pursue a variation to clause 25.5(a)(ii) so that it is clear that the evening penalty ceases to apply at 5am.

This will be an evidentiary and merits based case. Ai Group currently estimates it may call up to 3 witnesses in support of the claim.

(c) Saturday work (Clause 25.5(b))

The reference to “span of hours” in clause 25.5(b) appears to be an anomaly and/or an error, as there does not appear to be a “span of hours” in the Award to which the reference relates. The words are therefore unnecessary and confusing, and should be deleted.

Ai Group’s position is that this issue may be dealt with on its merits.

(d) Rest breaks (Clause 27.1)

Ai Group proposes that clause 27.1 of the Award be varied so as to allow for the 10 minute rest break to be taken as 2 x 5 minute rest breaks, by agreement between an employer and an employee.

Ai Group will provide evidence in support of this claim, and anticipates calling 1 witness.

Variations previously proposed to other Stage 4 Awards

9. In accordance with previous directions issued by the Commission, Ai Group filed an outline of variations sought to other group 4 awards in its 2 March 2015 Outline, and a second Outline filed on 12 November 2015. For completion we note that:
- The proposed variations outlined in our submission of 2 March 2015 in relation to the *Food, Beverage and Tobacco Manufacturing Award 2010* have been referred to the Payment of Wages Full Bench (AM2016/8).
 - The proposed variations outlined in our submission of 2 March 2015 in relation to the *Building and Construction General On-Site Award 2010* and the *Joinery and Building Trades Award 2010* have been referred to a Full Bench constituted to deal with substantive variations sought to the construction industry modern awards (AM2016/23). We understand that those awards are not subject to the Directions.

- The proposed variations outlined in our submission of 15 November 2016 have been referred to the Payment of Wages Full Bench (AM2016/8).

10. Accordingly, we have not here dealt with the aforementioned variations.



DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Fast Food Award 2010 (MA000003) (AM2014/267)

JUSTICE ROSS, PRESIDENT

SYDNEY, XX XXXX 2016

4 yearly review of modern awards – Fast Food Award 2010 (MA000003).

- A. Further to the decision issued on [insert date]¹ it is ordered that, pursuant to s.156(2)(b)(i) of the *Fair Work Act 2009*, the *Fast Food Industry Award 2010*² be varied by:
1. Deleting sub-clause 19.2(b).
 2. In sub-clause 25.5(a)(ii), inserting the words “and before 5.00am” after the word “midnight”.
 3. In sub-clause 25.5(b), deleting the words “within the span of hours” after the word “work”.
 4. In sub-clause 27.1(a), substituting the words “Subject to clause 27.1(b) below, breaks” in place of the first instance of the word “Breaks”.
 5. Inserting a new sub-clause 27.1(b), as follows:

(b) By agreement between an employer and an employee, a 10-minute rest break may instead be taken as two separate 5-minute rest breaks.
 6. Re-numbering existing sub-clauses 27.1(b) – (f), to 27.1(c) – (g).
- B. This determination comes into effect on [insert date].

PRESIDENT

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¹ [insert citation].

² MA000003.