



REPORT TO FULL BENCH

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards

(AM2019/17)

COMMISSIONER BISSETT

MELBOURNE, 8 APRIL 2020

4 yearly review of modern awards – finalisation of Exposure Drafts and variation determinations – Textile, Clothing, Footwear and Associated Industries Award 2010.

[1] A conference of interested parties in relation to the *Textile, Clothing, Footwear and Associated Industries Award 2010*¹ (TCF Award) was held on 3 April 2020 in the context of the Tranche 3 Awards Background Paper issued in conjunction with the Statement of the Full Bench² (Background Paper).

[2] The Conference was attended by the Construction, Forestry, Maritime, Mining and Energy Union (Manufacturing Division) (CFMMEU-MD) and the Australian Industry Group (AiGroup).

[3] The following matters were agreed by the parties:



Issue	Outcome
Calculation of overtime for casuals ([335]-[338] ³)	The parties agree with the provisional view expressed by the Full Bench.
Minor drafting issues ([339]-[342], [353]-354])	The parties have no objection to the proposed amendments.
Clause 4.7 and clause 4.8 – Coverage proposals by AiGroup ([344]-[352])	The parties agree with the provisional view expressed by the Full Bench. The CFMMEU-MD agrees with the amendment as proposed by the AiGroup.
Clause 18.2 – Meal breaks-shiftworkers in the textile industry proposal by CFMMEU-MD ([356]-[362])	The AiGroup has no objection to the amendment proposed by CFMMEU-MD at [361].

¹ MA000017

² [2020] FWCFB 1539

³ Paragraph numbers are references to the Background Paper

<p>Schedule E and Schedule F to be reversed proposal by CFMMEU ([363]-[365])</p>	<p>The AiGroup has no objection to the proposal.</p>
<p>Clause 19-Minimum Rates.⁴ The CFMMEU-MD has concerns with the inclusion of the words “worked by the employee” in the context of other clauses which provide minimum of 3 hours on any day for a part-time employee (clause 10.6) and minimum 3 hour payment for a casual employee (clause 11.4). CFMMEU-MD propose to add a note that clause 19 does not effect the minimum engagement or minimum payment.</p>	<p>AiGroup does not consider that the variation proposed by the CFMMEU to clause 19 of the exposure draft should be made as it is unnecessary. Clause 19 and the relevant minimum engagement / payment provisions operate in conjunction with one another. The insertion of additional footnotes at clause 19, as proposed by the CFMMEU, would serve only to unnecessarily duplicate the terms and effect of the minimum engagement / payment provisions.</p>
<p>Other Schedules issues raised by CFMMEU ([366]).</p> <p>These matters relate to rate of pay due to casual employees who work on a public holiday (clause 43.2).</p> <p>Public holiday rates and other penalty rates for casual employees are contained in the tables at C.4.1, C.5.1, C.5.2 and C.5.3 in Schedule C.</p> <p>The rates in the tables are based on a cumulative method of calculation and not a compounding. The CFMMEU says the rates should be compounding.</p>	<p>The CFMMEU and AiGroup acknowledge that the question of the method by which the public holiday rate should be calculated may not develop clarity until such time as the Full Bench in AM2017/51 hands down its decision.</p> <p>The parties have agreed that the most sensible approach (as has been used in relation to casual overtime rates) is to delete those columns in C.4.1, C.5.1, C.5.2 and C.5.3 which purport to specify casual employee rates for anything but ordinary hours (in effect deleting C.5.1, C.5.2 and C.5.3 and the public holiday column in C.4.1).</p> <p>The CFMMEU-MD propose, and the AiGroup agree, that this matter should be revisited following the determination by the Full Bench in AM2017/51 in relation to the TCF Award. The parties consider that a telephone conference of the parties be convened at that time to discuss the position of the parties.</p>

COMMISSIONER

⁴ This matter appears have inadvertently be left out of the Background Paper