



DECISION

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009
Sch. 5, Item 6 - Review of all modern awards (other than modern enterprise and State PS awards) after first 2 years

**Australasian Meat Industry Employees Union, The
Australian Meat Industry Council**
(AM2012/103) and (AM2012/164)

Meat Industry

COMMISSIONER RIORDAN

SYDNEY, 23 JANUARY 2013

Modern Awards Review 2012 - application to vary the Meat Industry Award 2010.

Introduction

[1] This decision concerns applications by the Australasian Meat Industry Employees' Union (AMIEU) and the Australian Meat Industry Council (AMIC) to vary the Meat Industry Award 2010¹ (the Award). The applications are made under Sch. 5, Item 6 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (the Transitional Act) as part of the review of all modern awards of which the Fair Work Commission (formerly Fair Work Australia) is required to conduct after the first two years of all modern awards coming into effect (the 2012 Review).

[2] The applications were subject to numerous Conferences and discussions between the parties and were set down for hearing on 30 November 2012.

[3] Immediately prior to the hearing, the parties were able to reach a settlement on all outstanding issues. AMIC has subsequently filed an amended application to cover all agreed matters between the parties in relation to AM2012/103 and AM2012/164.

The Legislation

[4] Sch. 5, Item 6 of the Transitional Act provides:

“(1) As soon as practicable after the second anniversary of the FW (safety net provisions) commencement day, FWA must conduct a review of all modern awards, other than modern enterprise awards and State reference public sector modern awards.

(2) In the review, FWA must consider whether the modern awards:

(a) achieve the modern awards objective; and

(b) are operating effectively, without anomalies or technical problems arising from the Part 10A award modernisation process.

(2A) The review must be such that each modern award is reviewed in its own right. However, this does not prevent FWA from reviewing 2 or more modern awards at the same time.

(3) FWA may make a determination varying any of the modern awards in any way that FWA considers appropriate to remedy any issues identified in the review.

(4) The modern awards objective applies to FWA making a variation under this item, and the minimum wages objective also applies if the variation relates to modern award minimum wages.

(5) FWA may advise persons or bodies about the review in any way FWA considers appropriate.

(6) Section 625 of the FW Act (which deals with delegation by the President of functions and powers of FWA) has effect as if subsection (2) of that section included a reference to FWA's powers under subitem (5)."

[5] Further provisions of the Act are also applicable and relevant to the 2012 Review. Section 134 provides as follows:

"134 The modern awards objective

What is the modern awards objective?

(1) FWA must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

- (a) relative living standards and the needs of the low paid; and
- (b) the need to encourage collective bargaining; and
- (c) the need to promote social inclusion through increased workforce participation; and
- (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and
- (e) the principle of equal remuneration for work of equal or comparable value; and
- (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and

- (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
- (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

This is the modern awards objective.”

Variations sought

[6] Clause 15 (casual employment):

- (a) By deleting from subclause 15.7 of clause 15 the words “other agreed arrangements set out in 29.2” and replace them with the words “arrangements set out in clause 29.1”.

[7] Clause 28:

- (a) Renaming the clause “**Other duties**”.
- (b) Renumbering the substantive part of the existing clause 28 as “**28.1 Higher duties.**”
- (c) Insert a new clause 28.2 as follows:

“28.2 Relieving inspection duties

An employee who is usually engaged to perform work in a classification under this Award and who is requested to perform meat inspection duties on a relief bases, shall be entitled to payment for all such periods of relief duty at the rate specified for the classifications appearing in clause B. 3.6 of Schedule B to this Award.

For the purposes of this clause only, meat inspection duties shall mean and include the performance of any number of the tasks usually performed by a meat inspector (as defined in clause 4.3(a) of this Award).”

[8] Clause 4.3(a):

By adding at the end of clause 4.3(a) the words “...except to the extent provided for by clause 28.2.”

[9] Clause 33.9:

- (a) In clause 33.9 add a new subclause (f) as follows:

“(f) in any situation where an employee is entitled to a penalty payment under 31.2 (h) (i) or (ii) and is also entitled to a shift allowance under this clause in relation to the same shift, the employee shall only be entitled to payment of the higher penalty rate and not both.”

- (b) In clause 33.9(c) delete the words “appropriate rate” and replace them with “ordinary hourly rate”.

[10] Schedule B, clause B.3.3:

- (a) Insert the words “into cans” after the word “bacon” appearing in Manufacturing Establishment Stream entry of clause B.3.3 which presently reads:

“Slicing and/or operating scales, packing ham or bacon and/or operating closing machine.”

Decision

[11] I am satisfied that the consent variations sought meet the relevant tests pertaining to the Modern Award Review.

I hereby grant the application.

The determination

[12] A determination is contained in PR533352.



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