



BACKGROUND PAPER

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

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

(AM2017/49)

MELBOURNE, 5 APRIL 2019

Fast Food Industry Award 2010 – Award stage – substantive issues

Below is an option for re-drafting current clause 12 of the *Fast Food Industry Award 2010*. This option is provided in order to assist discussion and does not represent the view of the Full Bench.

Proposed re-draft:

12.1 A part-time employee is an employee who:

- (a) works less than 38 hours per week; and
- (b) has reasonably predictable hours of work.

12.2 At the time of first being employed, the employer and the part-time employee will agree, in writing, on a regular pattern of work, specifying at least:

- (a) the number of hours worked each day;
- (b) which days of the week the employee will work;
- (c) the actual starting and finishing times of each day;
- (d) that any variation will be in writing, including by any electronic means of communication;
- (e) that the weekly engagement is a minimum of 8 hours and that the daily engagement is a minimum of 3 consecutive hours; and
- (f) the times of taking and the duration of meal breaks.

12.3 The employer and employee may agree to vary an agreement made under clause 12.2 in relation to a particular rostered shift as follows:

- (a) any agreement to vary the regular pattern of work for a particular rostered shift must be recorded at or by the end of the affected shift; and

- (b) the agreed variation must be recorded in writing, including by any electronic means of communication.
- 12.4 The employer and employee may agree to vary an agreement made under clause 12.2, in respect of the regular pattern of work, on an ongoing basis or for a specified period of time, as follows:
 - (a) any agreement to vary the regular pattern of work on an ongoing basis or for a specified period of time must be recorded before the variation occurs; and
 - (b) the agreed variation must be recorded in writing, including by any electronic means of communication.
- 12.5 The employer must keep a copy of any agreement made under clause 12.2 and any agreed variation made under clauses 12.3 and 12.4 and provide a copy to the employee, if requested to do so.
- 12.6 An employer is required to roster a part-time employee for a minimum of 8 hours per week and a minimum of 3 consecutive hours on any shift.
- 12.7 An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 13—Casual employment.
- 12.8 A part-time employee employed under the provisions of this clause will be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed. All time worked in excess of the hours as agreed under clause 12.2 or varied under clause 12.3 or 12.4 will be overtime and paid for at the rates prescribed in clause 26—Overtime.

Consequential minor amendment:

[1] As a consequence of the changes proposed to clause 12 above it will also be necessary for a minor consequential amendment to be made to **Clause 26—Overtime** by adding the reference to clause 12.4 in 26.2(e) in the following terms;

- 26.2 A full-time or part-time employee shall be paid overtime for all work as follows:
 - (a) In excess of:
 - (i) 38 hours per week or an average of 38 hours per week averaged over a four week period; or
 - (ii) five days per week (or six days in one week if in the following week ordinary hours are worked on not more than four days); or
 - (iii) eleven hours on any one day; or
 - (b) Before an employee's rostered commencing time on any one day; or

- (c) After an employee's rostered ceasing time on any one day; or
- (d) Outside the ordinary hours of work; or
- (e) Hours worked by part-time employees in excess of the agreed hours in clause 12.2 or as varied under clause 12.3 or 12.4.