



# 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, 22 JULY 2020

*4 yearly review of modern awards – finalisation of exposure drafts – Manufacturing and Associated Industries and Occupations Award 2020.*

[1] On 30 April 2020 the Full Bench issued a determination finalising the *Manufacturing and Associated Industries Award 2020* (the Manufacturing Award 2020), operative from 29 May 2020.<sup>1</sup> A correction determination was issued on 27 May 2020.<sup>2</sup>

[2] An issue concerning entitlements to Sunday and public holiday penalty rates for vehicle manufacturing employees engaged in shiftwork in the Manufacturing Award 2020 was subsequently identified. Previously, in the *Vehicle Manufacturing, Repair, Services and Retail Services Award 2010* (the Vehicle Award 2010), vehicle manufacturing employees engaged in shiftwork were entitled to the penalty rates for Sunday and public holiday work set out at clauses 55.5 and 55.6. These entitlements appear to have been omitted from the Manufacturing Award 2020.

[3] Clause 33.1 of the Manufacturing Award 2020 sets out the penalty rates payable to day workers for work on Sundays and public holidays and clause 33.2(j) sets out the penalty rates payable to shiftworkers for work on Sundays and public holidays. However, clause 33.2(a) excludes vehicle manufacturing employees from the operation of clause 33.2 (Rates for shiftworkers) and states that penalty rates for these shiftworkers are prescribed in clause 55.1 of Part 9—Vehicle manufacturing employees. Clause 55.1 does not contain any penalty rates for Sunday or Public Holiday work.

[4] This issue appears to have arisen when the vehicle manufacturing provisions were first incorporated into the exposure draft for the Manufacturing Award by agreement in early 2018.<sup>3</sup>

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<sup>1</sup> [PR718704](#).

<sup>2</sup> [PR719473](#).

<sup>3</sup> See [exposure draft](#) published 17 April 2018.

[5] In a statement published on 2 July 2020,<sup>4</sup> I expressed the provisional view that there appeared to be an error in the Manufacturing Award 2020 and that the error should be corrected. A draft correction determination inserting the Sunday and public holiday penalty rates provisions from clauses 55.5 and 55.6 of the Vehicle Award 2010 into clause 55 of the Manufacturing Award 2020 was attached to the Statement.

[6] Parties were asked to comment on the draft determination by 4:00 pm Wednesday, 15 July 2020. The draft determination has been reproduced at Attachment A of this Report.

[7] On 20 July 2020 a joint submission was received from the Australian Manufacturing Workers' Union and the Australian Industry Group supporting the provisional view and draft correction determination set out in the Statement.<sup>5</sup> No other submissions were received or views expressed.

[8] I recommend that the Full Bench issue a Statement as follows:

- outline the error concerning Sunday and public holiday penalty rates identified above;
- express a provisional view that the award be varied in accordance with the draft determination;
- provide parties with two weeks from the date of the decision to make any submissions opposing our provisional view; and
- indicate that if no submissions are received a determination will be issued varying the award.

  
  
COMMISSIONER

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<sup>4</sup> [\[2020\] FWC 3396](#).

<sup>5</sup> [Submission](#), AMWU and Ai Group, 20 July 2020

## Attachment A

MA000010 PRXXXXXX



# DETERMINATION

*Fair Work Act 2009*

s.156—4 yearly review of modern awards

## **4 yearly review of modern awards**

(AM2019/17)

## **MANUFACTURING AND ASSOCIATED INDUSTRIES AND OCCUPATIONS AWARD 2010**

[MA000010]

Manufacturing and associated industries

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER BISSET

MELBOURNE, 12 JUNE 2020

*4 yearly review of modern awards – Manufacturing and Associated Industries and  
Occupations Award 2010 – modern award varied – correction.*

A. The determinations issued by the Full Bench on 30 April 2020 [[PR718704](#)] and 27 May 2020 [[PR719473](#)] are corrected as follows:

1. By deleting clause 33.2(a) of the attachment to the determination published on 27 May 2020 and inserting the following:

- (a) Clause 33.2 does not apply to vehicle manufacturing employees covered by clause 4.8(a)(xi). The rates for shiftwork for these employees are prescribed in clause 55 of Part 9—Vehicle manufacturing employees of this award.

2. By deleting clause 40.2 of the attachment to the determination published on 27 May 2020 and inserting the following:

**40.2** Where an employee works on a public holiday they will be paid in accordance with clauses 17.2(g), 33.1(b), 32.7, 33.2(j) and 55.3.

3. By inserting clause 55.2 into the attachment to the determination published on 27 May 2020 as follows:

## **55.2 Penalty rates for shiftworkers—Sunday shifts**

- (a) Where an employee works an afternoon or night shift on a Sunday, the work done will be paid for at the rate of **200%** of the minimum hourly rate.
- (b) A shift commencing before 10.45 pm on a Sunday will be regarded as a Sunday shift and all work done during that shift will be paid for at the rate of **200%** of the minimum hourly rate.
- (c) A shift commencing at 10.45 pm or between 10.45 pm and midnight on a Sunday will not be regarded as a Sunday shift and work done during that shift will not entitle an employee to the Sunday rate.
- (d) A shift commencing before midnight on the day preceding a Sunday and extending into the Sunday will be regarded as Sunday shift and all work done during that shift will be paid for at the rate of **200%** of the minimum hourly rate.

4. By inserting clause 55.3 into the attachment to the determination published on 27 May 2020 as follows:

## **55.3 Penalty rates for shiftworkers—public holiday shifts**

- (a) An employee who works an afternoon or night shift on a public holiday will be paid for that work at the rate of **250%** of the minimum hourly rate.
- (b) A shift commencing before 10.45 pm on a public holiday will be regarded as a public holiday shift and all work done during that shift will be paid for at the rate of double time and a half.
- (c) Except as provided in clause 55.3(e) a shift commencing at 10.45 pm or between 10.45 pm and midnight on a public holiday will not be regarded as a public holiday shift and work done during that shift will not entitle an employee to the public holiday rate.
- (d) Except as provided in clause 55.3(e) a shift commencing before midnight on the day preceding a public holiday and extending into the public holiday will be regarded as a public holiday shift and all work done during that shift will be paid for at the rate of **250%** of the minimum hourly rate.
- (e) Notwithstanding clauses 55.3(c) and (d) where an employee is rostered for a shift which terminates on a public holiday and a shift which commences on the same public holiday, one shift only will be regarded as the public holiday shift and such shift will be the one, the major portion of which falls on the public holiday.
- (f) For the purpose of clause 55.3 public holiday means a day provided for in clause 40—Public holidays

5. By inserting the following into the table appearing at clause C.1.1 of the attachment to the determination published on 27 May 2020, underneath the final row entitled “Saturday (clause 55.1(e))”:

Sunday shifts (clause 55.2)	200%
Public holiday shifts (clause 55.3)	250%

6. By updating the table of contents and cross references accordingly.

B. This determination comes into operation from 29 May 2020. In accordance with s.165(3) of the Fair Work Act 2009, this determination does not take effect until the start of the first full pay period that starts on or after 29 May 2020.

PRESIDENT

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