



President's statement

Modern Awards Review 2023-24 — Final Report

Justice Hatcher, President

Sydney, 18 July 2023

[1] This statement concerns the finalisation of the Modern Awards Review 2023–24. This Review was initiated after the Minister for Employment and Workplace Relations sent correspondence to the Commission on 12 September 2023 expressing the Commonwealth Government's interest in a targeted review of modern awards. On 15 September 2023, I issued a statement¹ announcing that I had determined to initiate the Review on the Commission's own motion to consider four 'priority' matters identified in the Minister's correspondence, namely:

- (1) Investigating existing award coverage and minimum standards for the arts and culture sector, including potential coverage gaps, in line with the Government's *National Cultural Policy*.
- (2) Considering whether the terms of modern awards appropriately reflect the new object of the *Fair Work Act 2009* (Cth) (FW Act) and modern awards objective regarding job security and the need to improve access to secure work across the economy, including by:
 - (a) considering award provisions concerned with rostering, guaranteed shifts, and the interaction of permanent, part-time, and casual classifications; and
 - (b) reviewing standard award clauses with general application across the award safety net, to assess their continuing suitability in light of the updated modern awards objective.
- (3) Commencing a consultation and research process considering the impact of workplace relations settings on work and care, including early childhood education and care, having regard to relevant findings and recommendations of the Final Report of the Senate Select Committee on Work and Care.
- (4) Identifying what parties believe could be done to make awards easier to use, while not resulting in any reduction in entitlements for award-covered employees, with a focus upon the seven most commonly used modern awards.

[2] On 20 September 2023, I constituted a Full Bench for the conduct of the Review consisting of Deputy President Gostencnik, Deputy President Millhouse, Deputy President O'Neill, Commissioner Tran and myself. On 4 October 2023, the Full Bench issued a

¹ [President's statement—Modern Awards Review 2023–24](#).

statement² setting out a final timetable for the conduct of the Review. On 24 November 2023, the Full Bench issued a further statement³ indicating that members of the Full Bench had been allocated to the conduct of the different ‘streams’ of the Review as follows:

- Arts and culture sector — Deputy President Millhouse
- Job security — Deputy President Gostencnik and Commissioner Tran
- Work and care — Deputy President O’Neill
- Making awards easier to use — Justice Hatcher, President.

[3] In each of the first three of the above streams, the Commission commenced the Review process by publishing a discussion paper. For the work and care stream, the Commission additionally published two research papers and subsequently undertook a survey of employers. Submissions in response were then invited and received from a large range of participating parties. In the ‘making awards easier to use’ stream, the process was initiated by inviting parties to submit proposals for the variation of the subject awards to improve their useability. A large range of proposals were submitted, and submissions in response to these proposals were then invited.

[4] In all streams, the Commission then engaged in extensive consultation conferences with participating parties. Except for some limited matters, these consultations resulted in very little consensus being reached between employers and employer organisations, unions and other participating parties. However, from the Commission’s perspective, the Review process has facilitated the identification of award provisions relevant to the subject matters of the Review which require priority attention.

[5] The Full Bench has today published its final report on the Review. Given the lack of consensus on key issues, the Full Bench has refrained from expressing determinative views about them. The key outcome of the Review, as stated by the Full Bench in the report, is that the Commission will, on its own initiative, commence proceedings pursuant to ss 157(3)(a) and/or 160(2)(a) of the FW Act to deal with the priority matters identified in the report. The proceedings to be initiated in this way are as follows:

(1) *Amusement, Events and Recreation Award 2020*

These proceedings will consider variations to the classification structure and other terms of this award to ensure that it clearly and adequately establishes minimum terms and conditions of employment for ‘arts workers’.

(2) *Live Performance Award 2020*

There was a consensus reached in the consultation process for the arts and culture sector stream as to variations necessary to rectify identified deficiencies in this award. These proceedings will give consideration to these variations.

² [2023] FWCFB 179.

³ [2023] FWCFB 218.

(3) *General Retail Industry Award 2020*

The report identifies that the Retail Award attracted the most proposals for change in the ‘making awards easier to use’ stream and that this indicates a degree of concern amongst employers about the useability of this award which is significantly higher than for the other awards the subject of the Review. These proceedings will consider certain proposals advanced in the ‘making awards easier to use’ stream of the Review for the variation of the Retail Award except for those pertaining to part-time employment (which will be the subject of separate proceedings — see below). As the report explains, during the conduct of the review the Australian Retailers Association (ARA) filed an application to vary the Retail Award in a number of respects on grounds that overlapped with the subject matter of the ‘making awards easier to use stream’. The Commission-initiated proceedings concerning the Retail Award will be heard and determined together with the outstanding matters in the ARA application (except those matters in the ARA application concerning part-time employment).

(4) *Working from home — Clerks—Private Sector Award 2020*

These proceedings will be concerned with the development of a ‘working from home’ term in the Clerks Award, which we identify as the most commonly-used award under which working from home is most likely to occur. The term is intended to be one which facilitates employers and employees making workable arrangements for working at home and removes any existing award impediments to such arrangements. The term that is developed may serve as a model for incorporation in other modern awards, with or without adaptation.

(5) *Fixed-term contracts — Higher Education Industry—Academic Staff—Award 2020 and Higher Education Industry—General Staff—Award 2020*

Arising from the job security stream of the Review, these proceedings will involve a review of the fixed-term contract provisions of the *Higher Education Industry—Academic Staff—Award 2020* and the *Higher Education Industry—General Staff—Award 2020* in light of the provisions concerning the use, extension and renewal of fixed-term contracts now contained in Division 5 of Part 2-9 of the FW Act.

(6) *Part-time employment*

Arising from the job security, work and care and ‘making awards easier to use’ streams of this Review, these proceedings will undertake a fundamental review of award provisions regulating part-time employment, focused on the seven awards the subject of the ‘making awards easier to use’ stream. The matters the subject of review will include the establishment of the hours of employment (including the number of hours to be worked, the days upon which work is to

be performed, and the starting and finishing times of work), prescribed daily and weekly minimum hours of work, and the circumstances in which and means by which working hours may be altered and additional hours may be worked. Unless there are good reasons for variation in respect of specific industries or occupations, the objective of such a review will be to establish a standard model for part-time employment in place of the variety of provisions which currently exist. Those aspects of the ARA application concerning part-time employment will be heard and determined together with these proceedings.

[6] Proceedings (3) and (4) above will be initiated in August 2024. Proceedings (1), (2) and (5) will be initiated in September 2024. The precise subject matter of each of the proceedings will be particularised at that time. The proceedings concerning part-time employment are likely to be substantially wider in scope and, having regard to the range of major award matters currently on foot before the Commission, will not be initiated until a suitable time in 2025.

[7] I thank all the parties and individuals who participated in the Review for their contributions.

PRESIDENT