



THE HON JULIA GILLARD MP
DEPUTY PRIME MINISTER

Parliament House
Canberra ACT 2600

The Hon Justice G M Giudice
President
Australian Industrial Relations Commission
GPO Box 1994
MELBOURNE VIC 3001

07 MAY 2009

Dear President

I am writing regarding the award modernisation process currently being undertaken by the Australian Industrial Relations Commission (the Commission) pursuant to section 576C(4) of the *Workplace Relations Act 1996* (the WR Act) and my award modernisation request (my request).

To maintain the consistency of my request with the Fair Work Act 2009 (FW Act) and the Australian Government's workplace relations policies, I am amending my request on the specific matters of equal remuneration, award exemption clauses, individual flexibility terms, industry specific considerations, supplementation of the National Employment Standards, the exclusion of the National Employment Standard – redundancy, piece worker base rates of pay and franchise awards.

Principle of equal remuneration

The request now refers to the promotion of the principle of equal remuneration for work of equal or comparable value to reflect the provisions of the FW Act.

Award exemption clauses

I note the Commission's comments in the 3 April 2009 decision about award exemption clauses. The request now reflects more clearly the Government's intention that the creation of modern awards should not exempt, or have the effect of exempting from the safety net provided by modern awards, employees other than those expressly listed in the request. Employees who are not high income employees should be protected by a complete and comprehensive modern award safety net of basic entitlements unless there is a history of exempting employees from coverage across a wide range of pre-reform awards and NAPSAs in the relevant industry or occupation. For example, the Clerks – Private Sector Award 2010 exempts employees employed by the week from certain provisions of the modern award (for example, over time pay, shift and other allowances). The Government considers that this award should not seek to exclude basic award conditions for employees who should be protected by a complete and comprehensive safety net, through both modern awards and the National Employment Standards (NES), given that there is not a history of exemption from these provisions in a wide range of awards and NAPSAs.

Individual flexibility terms

The request now also enables the Commission to include any additional protections in respect of individual flexibility arrangements it considers necessary for employees of Australian Disability Enterprises. For example, the need for a parent, guardian or representative to sign an individual flexibility arrangement on behalf of the employee where it is not practical or desirable for the employee to sign the agreement to the arrangement.

Industry specific considerations

The request now provides that the Commission should include terms in modern awards that, as far as possible, allow the continuation of roster arrangements and working hours presently in practice for work undertaken in remote locations. For example, the Mining Industry Award 2010 allows a majority of employees to agree with their employer to work shifts of 12 ordinary working hours. If the Commission is satisfied that most employees currently work these arrangements within the industry, or part of the industry, then the modern award should provide for shifts of 12 ordinary hours to ensure award modernisation reflects established work practices.

The request also makes clear that where a modern award covers remote work, the Commission may include terms providing that an employer may reasonably require employees who work on a roster to take annual leave in a manner that fits in with the roster. Where employees in remote areas work even-time rostering arrangements which include annual leave, the Commission should facilitate the retention of these arrangements.

Supplementation of the National Employment Standards

The request has been clarified in respect of how terms in a modern award may supplement the terms of the NES, where the Commission considers it necessary to ensure the maintenance of a fair minimum safety net. The request now includes a reference to 'the rate of pay at which various types of leave is taken' as a further example of a modern award term that may supplement the NES.

The exclusion of the National Employment Standard – redundancy

I am aware that some participants in award modernisation have questioned whether specific exemptions from redundancy pay which currently apply in particular industries, can continue under a modern award. The intention of award modernisation is where these specific exemptions currently apply, that these are permitted where the Commission considers this to be appropriate. For this reason, the FW Act was amended to allow a modern award to create an exception to the redundancy NES.

Piece worker base rates of pay

The request now specifies that where the Commission makes provision in a modern award which provides a base rate of pay for pieceworkers for the purpose of calculating NES entitlements, such calculation should take into account the methods by which a piece worker may be remunerated, including by incentive payments or bonuses. The definition of base rate of pay in the FW Act does not include incentive payments or bonuses, and relying on this definition may result in some employees having no base rate of pay for NES purposes.

Franchise awards

The Transitional and Consequential Bill was introduced in the Parliament during the week beginning 16 March 2009. This Bill provides a process for modernising both enterprise and franchise awards. I previously excluded enterprise awards from the scope of the award modernisation task. I am now amending my request to also remove franchise awards from the current modernisation process.

Transitional provisions in modern awards

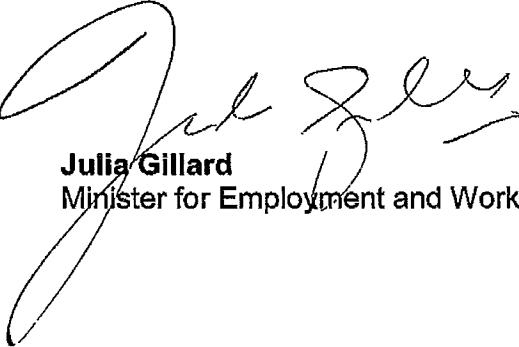
I note the Commission's decision of 3 April 2009 outlining the establishment and timetable for a separate proceeding to deal with transitional provisions in modern awards. The Government will be making detailed submissions to that proceeding regarding transitional arrangements.

As you are aware, section 576C(4) of the WR Act provides that the Minister may, by written instrument, vary or revoke an award modernisation request.

Accordingly, I issue to you as President of the Industrial Relations Commission, the attached variation to the award modernisation request. The variation to the request should be published by a Registrar of the Commission as soon as practicable. I also enclose a consolidated version of the request.

I congratulate the Commission on its work so far on the award modernisation process.

Yours sincerely



Julia Gillard
Minister for Employment and Workplace Relations