



FairWork  
Commission

# The 4-Yearly Award Review

Presentation to Clubs NSW

17 August 2017

Senior Deputy President Hamberger

# Outline of Presentation

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The legislative framework

The process

The award stage

Making awards easier to understand

Common issues

Part time and casuals

# The Legislative Framework

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- The Fair Work Act 2009
- The Modern Awards Objective
- Will we be doing this all over again?

# Steps in award stage

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1. Initial conference
2. Parties asked to identify issues they wish to raise
3. Each award referred to single member for conference
4. Exposure draft published with directions for submissions
5. Parties to make submissions on exposure drafts
6. Parties to make submissions in reply on exposure drafts
7. Further consultation with single member or Full Bench or hearing
8. Decision or statement issued by Full Bench with determination varying award

# Outstanding issues for clubs

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- Clubs in stage 4
- Small number of outstanding issues
- However, Clubs Australia Industrial has applied to revoke the clubs award and bring clubs under the hospitality award

# Reducing the regulatory burden: Plain language redrafting of Modern Awards

## Key Insights - Summary

Text heavy

Unwanted  
information

Difficult to  
navigate

Times New  
Roman font

Complex  
structure

Ambiguous

Constantly  
changing

Too long

Density of  
content

Jargon /  
legalese

Cross over  
with other docs

Vague

Wrong focus

Complex  
sentences

*Do not use archaic language such as:*

- “the abovementioned”, “the aforementioned”, “the aforesaid”
- “herein”, “hereinafter”, “hereinbefore”
- “hereby”, “hereof”, “hereto”, “herewith”
- “thereby”, “therefor”, “therefrom”
- “therein”, “thereof”, “thereon”, “thereto”
- “thereupon”, “thereunder”, “thereunto”, “therewith”
- “whatsoever”, “whomsoever”, “whosoever”.

*Use “end” instead of “expiration”*

*Use “to avoid doubt” instead of “for the avoidance of doubt”*

# Technical and drafting changes in exposure drafts

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- Expressing rates of pay as hourly as well as weekly
- Expressing work-related allowances as monetary amounts as well as percentages
- Publishing tables of rates of pay incorporating overtime and penalty rates
- Including examples of how more complex provisions operate, e.g. breaks after overtime and penalty rates for casuals working outside ordinary hours
- Some re-wording of provisions for plain English
- Re-arranging provisions to group like provisions together, e.g. putting all provisions in relation to breaks in a single clause

# Common issues

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The common issues include:

- Abandonment of employment
- annual leave
- annualised salaries
- apprentice conditions
- Award flexibility
- Blood donor leave
- Part time and casual employment
- Family and domestic violence
- Family friendly work arrangements
- Micro-business schedule
- National Training Wage
- Payment of wages
- Plain language re-drafting
- Public holidays
- Penalty rates; and
- Transitional provisions



# Common issue – Annual leave

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- Inserting cashing out of annual leave
- Granting leave in advance
- Dealing with excessive leave balances
- Payment of leave by electronic funds transfer

# Common issue – Award Flexibility

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- Time off in lieu of overtime clause
  - decision issued: clause inserted into most awards
- Majority clause provision (for employers who are covered by multiple awards)
  - external research commissioned

# Conclusion

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The Commission is adapting to a number of changes in the industrial relations landscape:

- The shift from collective to individual based disputes
- Expanding the assistance which the Commission can provide – *New Approaches*

The Commission is using technology to improve access and to enhance efficiency



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# Questions?