

## **VARIATION OF AWARD MODERNISATION REQUEST UNDER SECTION 576C(4)**

**I, JULIA GILLARD, MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS**, pursuant to section 576C(4) of the *Workplace Relations Act 1996* (the Act), vary my award modernisation request, dated 28 March 2008, as follows.

1. Omit paragraph 4 and substitute:

“4. When modernising awards, the Commission is to create modern awards primarily along industry lines, but may also create modern awards along occupational lines as it considers appropriate.

4A. The Commission is to create a modern award to cover employees who are not covered by another modern award and who perform work of a similar nature to that which has historically been regulated by awards (including State awards). The Commission is to identify this award as such. This modern award is not to cover those classes of employees, such as managerial employees, who, because of the nature or seniority of their role, have not traditionally been covered by awards. The modern award may deal with the full range of matters able to be dealt with by any modern award however the Commission must ensure that the award deals with minimum wages and meal breaks and any necessary ancillary or incidental provisions about NES entitlements.

4B. In creating modern awards, and as indicated at paragraph 3(d) above, the Commission must have regard to the desirability of reducing the number of awards operating in the workplace relations system.”

2. Paragraph 5:

Omit “paragraphs 25-40”, substitute “paragraphs 28 - 46”.  
Omit “proposed” (wherever occurring).

3. After paragraph 8, insert:

“8A. In developing the modern award in accordance with paragraph 4A the Commission must have particular regard to paragraph 1(c) and consider how the modern award will include provisions appropriate for application to employers and employees in a range of industries and/or occupations.”

4. After paragraph 11, insert:

“11A. The Commission should ensure that each modern award includes a clause that sets out a process or processes to ensure the settlement of disputes in relation to matters arising under the award. The Commission should ensure the process or processes are suitable for the settling of disputes in relation to matters arising under the NES for employees to whom awards apply. In drafting this clause the Commission may have regard to any method of dispute resolution that it considers appropriate.”

5. Omit paragraphs 25-41 and substitute:

**“Minimum wages**

25. In accordance with section 576J of the Act, minimum wages are a matter that may be dealt with in modern awards. In dealing with minimum wages in modern awards, the Commission is to have regard to the desire for modern awards to provide a comprehensive range of fair minimum wages for all employees including, where appropriate, junior employees, employees to whom training arrangements apply and employees with a disability in order to assist in the promotion of employment opportunities for those employees.

**Allowances**

26. Allowances should be clearly and separately identified in modern awards.
27. The Commission is to ensure that all modern awards include an appropriate method or formula for automatically adjusting relevant allowances when minimum wage rates are adjusted.

**Interaction with the National Employment Standards**

28. The NES consist of 10 legislated minimum conditions of employment for all employees covered by the federal system. The NES will establish a simple legislative framework of minimum entitlements with straightforward application or machinery rules that are essential to the operation of each entitlement. The NES will operate in conjunction with a relevant modern award to provide a fair safety net of minimum entitlements for award covered employees.
29. A modern award may cross reference a provision of the NES. A modern award may replicate a provision of the NES only where the Commission considers this essential for the effective operation of the particular modern award provision. Where a modern award replicates a provision of the NES, NES entitlements will be enforceable only as NES entitlements and not as provisions of the modern award.
30. A modern award cannot exclude the NES or any provision of the NES. However, a modern award can provide ancillary or incidental detail in relation to the operation of an entitlement under the NES but only if the effect is not detrimental to an employee in any respect, when compared to the NES.
31. Subject to paragraphs 34 and 35 below, a modern award may include industry-specific detail about matters in the NES.
32. Subject to paragraph 34 below, a modern award may supplement the NES where the Commission considers it necessary to do so to ensure the maintenance of a fair minimum safety net for employees covered by the modern award, having regard to the terms of this request and the existing award provisions (including under NAPSAs) for those employees, such as small business redundancy entitlements. The

Commission may only supplement the NES where the effect of these provisions is not detrimental to an employee in any respect, when compared to the NES.

33. The NES provides that particular types of provisions are able to be included in modern awards even though they might otherwise be inconsistent with the NES. The Commission may include provisions dealing with these issues in a modern award. The NES allows, but does not require, modern awards to deal with, among other things:
- provision for loadings to be paid to school-based trainees and school-based apprentices in lieu of certain entitlements;
  - averaging of hours of work;
  - cashing out of paid annual leave – provided that modern awards contain a prohibition on undue influence or undue pressure and require payment of cashed out leave at full value;
  - the taking of paid annual leave;
  - particular circumstances in which an employee may be required to take paid annual leave;
  - cashing out of paid personal/carer's leave – provided that modern awards contain a prohibition on undue influence or undue pressure and require payment of cashed out leave at full value;
  - the kind of evidence required to be provided by an employee when taking paid personal/carer's leave, unpaid carer's leave or compassionate leave;
  - substitution of public holidays; and
  - the amount of notice an employee may be required to provide when terminating their employment.
34. In relation to long service leave, the Australian Government will, in co-operation with state governments, develop a national long service leave entitlement under the NES. In doing so, the Australian Government will also consult with major employer and employee representative bodies. Until then, long service leave entitlements derived from various sources will be protected. So as to not pre-empt the development of a nationally consistent approach, the Commission must not include a provision of any kind in a modern award that deals with long service leave.
35. Other than expressly authorised under this request, the Commission must not include a term in a modern award on the basis that it would be an allowable modern award matter where the substance of the matter is dealt with under the NES.

#### *Termination and Redundancy*

36. The NES excludes employees from redundancy entitlements where their award contains an 'industry specific redundancy scheme'. An 'industry specific redundancy scheme' in a modern award will operate in place of the NES entitlement in these circumstances.
37. An 'industry specific redundancy scheme' is one identified as such in a modern award.

38. The Commission may include an 'industry specific redundancy scheme' in a modern award.
39. In determining whether particular redundancy arrangements constitute an 'industry specific redundancy scheme', the Commission may have regard to the following factors:
  - when considered in totality, whether the scheme is no less beneficial to employees in that industry than the redundancy provisions of the NES; and
  - whether the scheme is an established feature of the relevant industry.

*Shift workers*

40. The NES apply to shift workers and provide that a shift worker is entitled to an additional week of annual leave – that is, five weeks of annual leave for each year of completed service.
41. The NES rely on a modern award to define, where required, a shift worker as appropriate for the particular industry covered by the award.
42. In modernising awards, the Commission must have regard to whether it is appropriate to include a definition of shift worker in a modern award that applies to these types of employees for the purposes of the NES annual leave entitlements.

*Piece workers*

43. The NES apply to a piece worker.
44. The NES rely on modern awards to define a piece worker and set out rules relating to the payment of NES entitlements (based on ordinary hours of work) for a piece worker.
45. In modernising awards, the Commission must have regard to whether it is appropriate to include:
  - (a) a definition of piece worker in a modern award that applies to these types of employees (if an employee is employed on the basis of hours worked, it is not expected that such employees would be defined as piece workers); or
  - (b) a provision that would provide a calculation of payment, a payment rate, or a payment rule in relation to a piece worker employee with respect to paid leave or paid absence under the NES. For example, a method for making payment to a piece worker employee when that employee is absent on annual leave.

*Ordinary hours of work*

46. Many entitlements in the NES rely on modern awards to set out ordinary hours of work on a weekly or daily basis for an employee covered by the modern award. The Commission is to ensure that it specifies in each modern award the ordinary hours of

work for each classification of employee covered by the modern award for the purpose of calculating entitlements in the NES. The Commission is also to ensure that ordinary hours (or the process for determining ordinary hours) are specified for each type of employment permitted by the modern award (for example, part time, casual). In the case of employees to whom training arrangements apply, the Commission should ensure that ordinary hours (or the process for determining ordinary hours) are specified for the purpose of calculating entitlements in the NES.”

[Signed]

A handwritten signature in black ink, appearing to be 'Julia Gillard', written over a horizontal line.

**THE HON JULIA GILLARD**  
**MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS**  
**June 2008**