

National Wage Decision highlights need for a National ‘Outdoor Leaders’ Award.

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Introduction:

The ‘*Annual Wage Review 2019-20 Decision*’, of the *Fair Work Commission (FWC)*, handed down on 19th June has once again demonstrated the need for one, all encompassing, Modern Award covering all aspects of the ‘*Outdoor Recreation Sector*’.

In a majority decision, the full bench determined that, the minimum wage and all Modern Award rates of pay would be increased by 1.75%; however, in a departure from usual practice, the award-rates would be increased at different points between 1st July (the ‘usual’, operative date for such adjustments), 1st November or 1st February 2021, depending upon the Commission’s assessment of the economic impact of the COVID-19 pandemic, on the various Sectors of the Australian Economy.

About the decision:

The Commission had a wide-range of submissions to consider (Federal & State Governments, the ACTU, Employer Groups, Charitable and not-for-profit groups, Sector Representatives, academics and individuals). The FWC observed that:

“While predominantly a public health issue, federal and state government-imposed restrictions to contain the spread of the virus, have had a profound economic impact.”

“...the shock to the labour market is unprecedented....”

The majority observed *“that a decision to grant no increase would mean that the living standards of low-paid award reliant employees would fall ...”*

Relying upon data supplied from the ATO via the ABS ‘*Weekly Payroll Jobs and Wages in Australia*’ statistical report, the FWC identified three broad groupings (clusters) of industries within the economy, based on number of hours worked, total wages, and number of jobs. Each ‘cluster’ being a broad indicator of the impact of the pandemic on the economy.’

- The ‘*lower cluster*’ (which had actually seen a small increase in wages and jobs amounting to 0.5%, in the electricity, water, gas, waste, finance and insurance services), will see the appropriate Modern Awards adjusted by the 1.75% increase on and from 1.7.2020;
- The ‘*central cluster*’ (where between 4 and 10.5% of jobs had been lost – in the information media and telecommunications, and manufacturing sectors), will see the relevant Modern Awards adjusted from 1.11.2020;
- The ‘*upper cluster*’ (where between 26.3 and 29.1% of jobs had been lost – Accommodation, food services, Arts and recreation services), will have rates increased from 1.2.2021.

It must be noted, that whilst the decision directly impacts the rates in the Modern Award network, many organisations have Enterprise Agreements linked directly to those awards, therefore creating a 'flow-on' effect.

Impact on the Outdoor Sector:

Depending upon their location, nature of services offered, skills-base requirements, and operational hours/days, Outdoor Recreation Employers have relied upon a wide variety of Modern Awards to underpin the terms and conditions of their workforces. This particular decision sees differing operative dates for the increased rates application:

From 1st July:

- *'Educational Services (Schools) General Staff Award 2020'*
- *'Social, Community, Home Care and Disability Services Industry Award 2010'*

From 1st November:

- *'Clerks - Private Sector Award 2010'*
- *'Educational Services (Post-secondary Education) Award 2020'*
- *'Miscellaneous Award 2020'*
- *'Higher Education Industry -General Staff-Award 2020'*

From 1st February 2021:

- *'Alpine Resorts Award 2010'*
- *'Amusements, Events and Recreation Award 2020'*
- *'Fitness Industry Award 2010',*
- *'Marine Tourism and Charter Vessels Award 2010'*
- *'Professional Diving industry (Recreational) Award 2010'.*

The FWC acknowledged “*..we accept that in relation to the timing of the increase we have awarded, the categorisation of awards into 3 groups is imperfect*”

“that the provision of an individualised incapacity to pay mechanism would provide a more targeted means of dealing with some of the potential problems.”

However, the Full Bench found itself constrained by the current restraints of the 'Fair Work Act 2009', which had been raised in previous years, however, they observed that it was for the parliament to resolve such legislative short-comings.

In the absence of a genuine 'sector-wide' 'Outdoor Recreation Industry' Modern Award, significant confusion and potential disharmony could arise as a consequence of this decision.