



**Australian Government**  
**Attorney-General's Department**  
**Deputy Secretary**  
**Industrial Relations Group**

15 December 2020

The Hon Justice Iain Ross AO  
President  
Fair Work Commission  
PO Box 1994  
MELBOURNE VIC 3001

Dear Justice Ross

The Attorney-General and Minister for Industrial Relations, the Hon Christian Porter MP, wrote to you on 9 December 2020 expressing the Government's view that it would be in Australia's economic interest for the Fair Work Commission to use its powers under section 157(3)(a) of the *Fair Work Act 2009* to initiate a process to examine potential changes to identified modern awards that would support Australia's economic recovery following the COVID-19 pandemic.

In a Statement of 10 December, you indicated you proposed to initiate a process on the Commission's own motion to consider the inclusion of loaded rates and exemption rates clauses in priority modern awards. Your statement indicated this process will also consider whether any changes can be made to simplify the classification structures in the priority awards.

The Commission process will provide a forum for interested parties and the Commonwealth to make submissions outlining the latest economic and labour market evidence, assisting the Commission in evaluating the case for change.

In your statement, you requested that the Department advise the Commission as to the data and resources it may be able to access to support this process. The Department expects to provide select data on working time arrangements, patterns of work, days worked per week and earnings in the hospitality and retail sectors that may assist in the Commission's deliberations from the following sources. As you are aware however, such data does not provide specific coverage by individual awards and will have other limitations.

- *Attorney General's Department Workplace Agreement Database* (WAD) provides data on the incidence and coverage of loaded rates in federally approved registered enterprise agreements. Additionally, the WAD has data on which entitlements that are being loaded (e.g. weekend penalty rates, overtime, shift work, public holidays etc.) and the incidence of clauses that commit to periodic audits of loaded rates to ensure they meet minimum standards. This data must be extracted manually and the Department will commence reviewing a sample of agreements with the relevant parent award.

- *Household Income and Labour Dynamics Australia (HILDA, Melbourne Institute)* is a household-based panel survey that collects information on economic and personal well-being, labour market dynamics and family life. The survey contains information on work schedules, hours worked and characteristics of weekend workers and earnings. The most recent data is for 2019.
- *Characteristics of Employment, TableBuilder (ABS)* provides information on all employed person according to their status in employment. Relevant data items include employment characteristics, employee earnings and working patterns and arrangements. August 2020 data will be available from 16 December 2020.
- *Survey of Employees, Earnings and Hours (ABS)* can be used to estimate the average weekly earnings, days of the week worked, distribution of hours paid for, weekly earnings of employees, cross referenced by method of setting pay, industry and business size. This survey update was delayed due to COVID-19, as such May 2018 data is the most recent available.
- *Longitudinal Labour Force (ABS)* enables in-depth analysis of the social and economic aspects of labour market engagement over time including work schedules, hours worked and contains changes in work schedules since the onset of COVID-19.

The Department is also engaging with the Treasury and other government departments to identify other relevant economic data sources and will advise the Commission of any subsequent findings.

The Department will attend the 17 and 18 December 2020 conferences on behalf of the Australian Government to further identify how it may assist the Commission's process going forward, including the timeframe for providing this and any other identified supporting data.

Yours sincerely



**Martin Hehir**  
Deputy Secretary  
Industrial Relations Group  
Attorney-General's Department