

STATEMENT

Fair Work Act 2009
s.157—variation of modern award

Expense-related allowances 2020
(AM2020/19)

PASTORAL AWARD 2010
[\[MA000035\]](#)

Agricultural industry

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT CATANZARITI
COMMISSIONER HAMPTON

MELBOURNE, 18 NOVEMBER 2020

Expense-related allowances – Pastoral Award 2010 – proposal to recalculate stand-alone allowances – allowances to be recalculated on latest CPI data.

[1] On 20 November 2020 the Commission received [correspondence](#) from the National Farmers Federation raising an issue about the recent adjustment of allowances in the Pastoral Award:

‘We have observed that The Vehicle Allowance in the Pastoral Award 2010, at clauses 17.2(b), 46.3(b), and 47.1(a), has been marked to increase from \$0.78 per kilometre to \$0.80 as a result of the Annual Wage Review 2019-20. The Pastoral Award 2010 was a Group 2 award and as such the wage and allowance adjustments resulting from the Annual Wage Review 2019-20 took effect on 1 November 2021. Accordingly, the adjustment factor for the Vehicle Allowances should be the percentage movement between the March 2014 index figure (when the Vehicle Allowance last increased) and the September 2020 index figure (the figure last published before the adjustment took effect). That is: $102.3/103.8 = 0.985549133$.

As the adjustment factor would result in a reduction in the Vehicle allowance ($\$0.78 \times 0.985549133 = \0.768728324), the allowance should remain unchanged. However, it appears that the adjustment factor which the Commission has used is based on the movement between the March 2014 and the March 2020 index figures. That is: $106.6 \times 103.8 = 1.0211946050$. This results in an increase (rounding up) to \$0.80, which is the figure that the Commission has adopted.

It would appear that this anomaly has occurred across all expense-related allowances in the Pastoral Award. That is to say, allowances have been adjusted based upon movement between the last change and the March 2020 CPI increase (as in Group 1 Awards) rather than the Sept 2020 increase. It may be that we have miscalculated or overlooked some aspect of the decision that has caused the Pastoral Award to be treated differently to the other Group 2 Awards, in which case we are happy to be corrected.

If we are not mistaken, would you be able to provide an explanation of why allowances in the Pastoral Award appear to have been treated as though it were a Group 1 Award in this determination, with respect to the adjustment factor used?’

[2] This Statement is in response to that correspondence and deals with the appropriate adjustment of the expense-related allowances published for the *Pastoral Award 2010* (the Pastoral Award now operating as the *Pastoral Award 2020* as at 6 November 2020). It is necessary to first set out some of the background to this issue.

[3] On 19 June 2020 a majority of the Expert Panel (the Panel) for the Annual Wage Review 2019–20 issued its decision [1](#) to increase the National Minimum Wage and modern award minimum wages by 1.75%.

[4] The Panel determined that exceptional circumstances warranted different operative dates for different groups of modern awards as follows [2](#):

Award Group	Operative Date
Group 1 Awards	1 July 2020
Group 2 Awards	1 November 2020
Group 3 Awards	1 February 2021

[5] Section 292(1) of the *Fair Work Act 2009 (Cth)* (the Act) requires that the variation determinations giving effect to any adjustment of ‘modern award minimum wages’ be published before 1 July in the next financial year. [3](#) Accordingly, the wage determinations for all awards were published on 26 June 2020, irrespective of their operative date.

[6] There are no similar requirements under the Act for the publication of allowance determinations (the instruments giving effect to the adjustment of the expense-related allowances of an award), which the Commission publishes separately. [4](#) However, s. 149 of the Act provides for the automatic variation of allowances to coincide with the variation in modern award minimum wages.

[7] Consistent with s.149 the method of adjustment of expense-related allowances is provided for in a standard clause incorporated into most modern awards. [5](#) It provides that the expense-related allowances are adjusted by positive movements in the applicable CPI figure between its most recent figure and when the allowance was last adjusted.[6](#) This adjustment is triggered when an award’s standard rate is varied, through an annual wage review or otherwise.[7](#)

[8] An information note published on the Commission’s website states that the allowance determinations for the Group 2 and Group 3 Awards would be published closer to their respective operative dates and would be adjusted based on the most recent CPI data available before they commenced operation—namely the September quarter 2020 and the December quarter 2020, respectively. [8](#)

[9] The allowance determinations for the Group 1 Awards (and the Pastoral Award) were published for comment on 19 June 2020 followed by the final allowance determinations on 26 June 2020. These determinations were based on the CPI data for the March quarter 2020. No comments were received in relation to the draft determination in respect of the Pastoral Award.

[10] The determination varying expense-related allowances in the *Pastoral Award 2010* was published on 26 June 2020 with a date of operation from 1 November 2020. The allowances were adjusted based on the latest Consumer Price Index (CPI) data available at the time, the March quarter 2020.

[11] The Pastoral Award was the only Group 2 Award to have their determination varying expense-related allowances published with the Group 1 Awards in June 2020. The determination was published at that time because the Pastoral Award contains a number of piece rates which include an expense-related allowance as part of the calculation of the piece rate. For example, the piece rates for shearers under clause 45.1(a) include four allowances that are affected by the CPI, including the shearing industry allowance, rations, combs/cutters and the payment for handpiece. Piece rates fall within the meaning of ‘modern award minimum wages’ under 284(3) of the Act. Accordingly, any variation of piece rates in an annual wage review must be published by 1 July (s. 292(1)).

[12] The expense allowance determinations for the Group 2 awards were published on 29 October 2020 and were adjusted based on the September quarter 2020 CPI data [9](#). These determinations did not include the Pastoral Award, and the expense allowances published in June 2020 in respect of the Pastoral Award remained based on the March quarter 2020.

[13] It is our *provisional* view that certain expense-related allowances in the *Pastoral Award 2010* be adjusted based on the September quarter 2020 CPI data, consistent with the position taken in the other Group 2 Awards with some limited exceptions. We only propose to adjust the ‘stand-alone’ allowances contained in [Table 1](#) of [Attachment A](#) and do not propose to vary any allowance that forms part of the calculation of a piece rate.

[14] [Table 1](#) of [Attachment A](#) shows the allowance rates as at July 2019, the rates as currently published (based on the March quarter 2020 CPI) and the revised rates recalculated on the September quarter 2020 CPI. Some allowances will be revised to a slightly higher rate compared to their current rate such as the meal allowance and the rate for combs and cutters in cl 44.4(b)(iv).

[15] [Table 2](#) of [Attachment A](#) shows the remaining expense-related allowances of the Pastoral Award that are incorporated into the calculation of a piece rate and are therefore not proposed to be varied. We do not propose to vary the rates as currently published (based on the March quarter 2020).

[16] A draft variation determination is at **Attachment B**. We propose that a final determination be made with an operative date of 30 November 2020.

[17] Comments on our *provisional* view or on the draft determination are to be submitted by no later than **4pm on Tuesday 24 November 2020** to amod@fwc.gov.au. If there is no opposition to our *provisional* view, we intend to make the proposed adjustments in [Table 1](#), adjusting those particular stand-alone allowances published in the expense determination [10](#) of June 2020 as set out in the draft determination at Attachment B. The rates will be revised to match the last column of the table and will have a date of operation from the first pay period from 30 November 2020. No variation will be necessary for the wages determination [11](#) issued in June 2020.

PRESIDENT

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<PR724560>

Attachment A

Table 1: Stand-alone expense-related allowances—rates as at 1 July 2019, as currently published and proposed adjustments

Allowance	Clause (2010 Award)	Clause (current 2020 Award)	Applicable CPI figure	Rates as at July 2019	Current rates (based on Mar-20 CPI)	Revised adjustment factor ¹	Proposed rates (based on Sep-20 CPI)
				\$	\$	Index	\$
Use of vehicle allowance	17.2(b)	18.3(c)	Private motoring sub-group	0.78 per km	0.80	0.985549	0.78 (↓0.02)
Meal allowance—overtime of more than one and a half hours	17.2(c)(i)	18.3(d)(i)	Take away and fast foods sub-group	13.76 per meal	14.04	1.021368	14.05 (↑0.01)
Meal allowance—overtime of more than two hours without required notice	17.2(c)(ii)	18.3(d)(ii)	Take away and fast foods sub-group	13.76 per meal	14.04	1.021368	14.05 (↑0.01)
With Keep deduction	28.3	32.3, B.2.1, B.2.2, B.2.4, B.3.1, B.3.2, B.3.4	All groups	129.21 per week	132.04	1.018405	131.59 (↓0.54)
Station hand—to find own horse	29.1	33.1(a)	All groups	7.50 per week	7.66	1.018405	7.64 (↓0.02)

Station hand —to find own saddle	29.1	33.1(b)	All groups	5.99 per week	6.12	1.018405	6.10 (↓0.02)
Meal allowance— overtime of more than one and a half hours	36.5	43.7(a)	Take away and fast foods sub- group	13.76 per meal	14.04	1.021368	14.05 (↑0.01)
Meal allowance— unplanned overtime of more than two hours	36.10	43.7(b)	Take away and fast foods sub- group	13.76 per meal	14.04	1.021368	14.05 (↑0.01)
Combs and cutters ²	44.4(b) (iv)	50.5(b) (iv)	Tools and equipment...	20.81 per week	21.08	1.046642	21.78 (↑0.70)
Vehicle allowance— all employees	46.3(b)	52.3(b)	Private motoring sub- group	0.78 per km	0.80	0.985549	0.78 (↓0.02)
Fares and travelling allowances for expeditionary employees— motor vehicle expenses	47.1(a)	53.1(a)	Private motoring sub- group	0.78 per km	0.80	0.985549	0.78 (↓0.02)
Fares and travelling allowances for expeditionary employees— expenses other than fares	47.1(f)	53.1(f)	Domestic holiday travel and accommodation sub-group	73.31 per day	75.16	1.020168	74.79 (↓0.37)

Expenses other than fares—per hour rate	47.1(g)	53.1(g)	Domestic holiday travel and accommodation sub-group	3.05 per hour	3.13	1.020168	3.11 (↓0.02)
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Note: ‘Tools and equipment ...’ means the Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group. The arrow in the last column designates whether the expense-related allowance is to be revised higher or lower compared to current figures and by how much.

¹ The adjustment factor is calculated as the applicable CPI for the September quarter 2020 divided by the applicable CPI at the time the allowance was adjusted (Vehicle allowance = March quarter 2014; Combs and cutters = March quarter 2017; All other allowances = March quarter 2019)

² The Combs and cutter rate provided in clause 44.4(b)(iv) is adjusted independently of the other combs/cutter allowance included in the piece rate for shearers under clause 45.1(a) and is not linked to any piece rate.

Table 2: Expense-related allowances incorporated into the calculation of piece rates—rates as at 1 July and as currently published

Allowance	Clause (2010 Award)	Clause (current 2020 Award)	Applicable CPI figure	Rates as at July 2019	Current rates (based on Mar-20 CPI)
				\$	\$
Shearers—shearing industry allowance	45.1(a)	A.1.1	All groups	224.20 per week	229.11
Shearers—rations	45.1(a)	A.1.1	Take away and fast foods sub-group	61.27 per week	62.53
Shearers—combs/cutters allowance	45.1(a)	A.1.1	Tools and equipment...	104.00 per week	105.36
Shearers—handpiece payment	45.1(a)	A.1.1	Tools and equipment...	23.51 per week	23.82

Shed hands— shearing industry allowance	45.3(b)	A.3.1	All groups	224.20 per week	229.11
Shed hands—rations	45.3(b)	A.3.1	All groups	61.27 per week	62.53
Woolpressers— shearing industry allowance	45.4(b)	A.4	All groups	224.20 per week	229.11
Woolpressers— rations	45.4(b)	A.4	All groups	61.27 per week	62.53
Shearing cooks— 69.58% of shearing industry allowance	45.5(b)	A.5	Shearing industry allowance * 69.58%	156.00 per week	159.41

Attachment B – proposed variation determination



MA000035 PRXXXXXX

DRAFT DETERMINATION

Fair Work Act 2009

s.157—variation of modern award

Expense-related allowances 2020
(AM2020/19)

PASTORAL AWARD 2020
[MA000035]

Agricultural industry

Expense-related allowances – Pastoral Award 2020.

A. Further to the Decision [[2020] FWCFB XXXX] issued by the Fair Work Commission on XX November 2020, the above award is varied as follows:

1. By deleting the amount “\$0.80” appearing in clause 18.3(c) and inserting “\$0.78”.
2. By deleting the amount “\$14.04” appearing in clause 18.3(d)(i) and inserting “\$14.05”.
3. By deleting the amount “\$14.04” appearing in clause 18.3(d)(ii) and inserting “\$14.05”.
4. By deleting the amount “\$132.04” appearing in clause 32.3 and inserting “\$131.59”.
5. By deleting the amount “\$7.66” appearing in clause 33.1(a) and inserting “\$7.64”.
6. By deleting the amount “\$6.12” appearing in clause 33.1(b) and inserting “\$6.10”.
7. By deleting the amount “\$14.04” appearing in clause 43.7(a) and inserting “\$14.05”.
8. By deleting the amount “\$14.04” appearing in clause 43.7(b) and inserting “\$14.05”.
9. By deleting the amount “\$21.08” appearing in clause 50.5(b)(iv) and inserting “\$21.78”.
10. By deleting the amount “\$0.80” appearing in clause 52.3(b) and inserting “\$0.78”.
11. By deleting the amount “\$0.80” appearing in clause 53.1(a) and inserting “\$0.78”.
12. By deleting the amount “\$75.16” appearing in clause 53.1(f) and inserting “\$74.79”.
13. By deleting the amount “\$3.13” appearing in clause 53.1(g) and inserting “\$3.11”.
14. By deleting the amount “\$132.04” appearing in the Note below the table in clauses B.2.1, B.2.2, B.2.4, B.3.1, B.3.2 and B.3.4 and inserting “\$131.59”.
15. By deleting the table appearing in clause C.2.1 and inserting the following:

Allowance	Clause	\$	Payable
General Employment Conditions			
Use of vehicle allowance	18.3(c)	0.78	per km
Meal allowance—overtime of more than 1.5 hours	18.3(d)(i)	14.05	per meal

Meal allowance—overtime of more than 2 hours without required notice	18.3(d)(ii)	14.05	per meal
Broadacre Farming and Livestock Operations			
With Keep deduction	32.3	131.59	per week
Station hand—to find own horse	33.1(a)	7.64	per week
Station hand—to find own saddle	33.1(b)	6.10	per week
Pig Breeding and Raising			
Meal allowance—overtime after working ordinary hours on Monday to Friday	43.7(a)	14.05	per meal
Meal allowance—unplanned overtime of more than 2 hours	43.7(b)	14.05	per meal
Shearing Operations			
Combs and cutters allowance	50.5(b)(iv)	21.78	per week
Allowance where sleeping quarters not provided— vehicle allowance—all employees	52.3(b)	0.78	per km
Fares and travelling allowances for expeditionary employees— motor vehicle expenses	53.1(a)	0.78	per km
Fares and travelling allowances for expeditionary employees— expenses other than fares—per day	53.1(f)	74.79	per day
Fares and travelling allowances for expeditionary employees—	53.1(g)	3.11	per hour

Expenses other than fares—per hour rate			
Shearers—shearing industry allowance	A.1.1	229.11	per week
Shearers—rations	A.1.1	62.53	per week
Shearers—combs/cutters allowance	A.1.1	105.36	per week
Shearers—handpiece payment	A.1.1	23.82	per week
Shed hands—shearing industry allowance	A.3.1	229.11	per week
Shed hands—rations	A.3.1	62.53	per week
Woolpressers—shearing industry allowance	A.4	229.11	per week
Woolpressers—rations	A.4	62.53	per week
Shearing cooks—69.58% of shearing industry allowance	A.5	159.41	per week

B. This determination comes into operation on 30 November 2020. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect in relation to a particular employee until the start of the employee’s first full pay period that starts on or after 30 November 2020.

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1 [\[2020\] FWCFB 3500](#).

2 [\[2020\] FWCFB 3500](#) at para. 466.

3 For more information about what the Commission can and cannot do in an annual wage review, please refer to the discussion paper: Fair Work Commission (2020), ‘What can and can’t be done in the Annual Wage Review 2019–20’, 13 May 2020, <https://www.fwc.gov.au/documents/wage-reviews/2019-20/consultations/discussion-paper.pdf>.

4 The Commission issues the determinations varying the expense-related allowance of modern awards as a result of annual wage reviews under the powers of s.157(1) of the Act.

5 Some of the enterprise and State reference public sector modern awards may not have the standard clause incorporated, however, their expense-related allowances are adjusted in the same manner nonetheless. The standard clause is also not contained in modern awards which do not have an expense-related allowance.

6 See clause D.2.2 from the *Manufacturing and Associated Industries and Occupations Award 2020* for a typical example of a standard clause.

7 Also see [\[2010\] FWA 3857](#) at paras 1, 3–4.

8 Fair Work Commission (2020), ‘Information Note—Method for adjusted expense-related allowances for the Annual Wage Review 2019–20’, 21 July 2020, https://www.fwc.gov.au/documents/wage-reviews/2019-20/research/information-note_adjustment-of-expense-allowances-for-the-awr19-20.pdf. This information paper also contains further information on the methodology for adjusting expense-related allowances.

9 [Expense-Related Allowances 2020](#)

10 [PR719007](#).

11 [PR718854](#).