



The Western Australian Industrial Relations Commission

111 St Georges Terrace, Perth

Proposed General Order to deal with the effects of the COVID-19 Pandemic

Friday, 3 April 2020

1. The Western Australian Industrial Relations Commission (the Commission) is aware of the circumstances of the COVID-19 pandemic and the effects on employees and employers of the responses by governments, both Federal and State¹. Those responses have placed significant restrictions on the community and affect the overall economy of the State. The Commission also notes the need for and benefits of greater flexibility in employment arrangements to employers, employees and the economy generally².
2. The Commission also notes the Statement issued by the Fair Work Commission on 1 April 2020 ([2020] FWCFB 1760) and the detailed information provided there. We note the provisional views expressed by the Fair Work Commission and the proposed variations to certain Modern Awards.
3. The Commission also notes the requirements of s 26(1) of the *Industrial Relations Act 1979* (WA) (the Act) and intends to take account of those matters specified as being required for consideration.
4. In those circumstances, the Commission is provisionally of the view that it is appropriate to, of its own motion, and subject to receiving and considering any submissions, issue a General Order pursuant to s 50 of the Act, to vary awards to provide measures designed to assist employers and employees. The objective in doing so is, to the extent possible,

¹ ABS, *Business Indicators, Business Impacts of COVID-19*, March 2020, Catalogue No 5676.0.55.003.

² 'Benefit from greater flexibility in employment arrangements', Professor Jeff Borland, Department of Economics, University of Melbourne, March 2020

to enable businesses to continue to operate and to preserve employment and the continuity of employment.

5. In doing so, we note that the awards of the Commission are set in a different legislative context to the Modern Awards of the Fair Work Commission and the Act contains different protections to those contained in the *Fair Work Act 2009* (Cth).

Proposed General Order

6. The proposed General Order would provide for:
 - unpaid pandemic leave of up to two weeks' unpaid leave if an employee is required, by government or medical authorities or acting on medical advice, to self-isolate or is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic;
 - twice the amount of annual leave at half pay.
7. The Commission notes that unlike a number of the Modern Awards of the Fair Work Commission, awards of the Commission do not generally provide for annual leave to be taken in advance. In the current circumstances of the COVID-19 pandemic, the Commission considers that it may be appropriate, as a temporary measure, to allow for an employer and employee to agree to an employee taking a period of annual leave in advance subject to certain conditions being met.
8. These arrangements would be subject to the conditions set out in the attached Schedule and would be temporary, applying until 30 June 2020. They may be extended by application or at the initiative of the Commission.
9. We note that parties to awards are entitled to negotiate with a view to resolving terms and conditions most suited to the needs of their industries, and we encourage them to do so. The Commission will expedite the process of reflecting any agreements reached or determining any disputes.

Timelines

10. Given the circumstances of the impact of the COVID-19 pandemic, the Commission proposes to move quickly. Any person wishing to respond to the Commission's provisional view and the proposed variations is to lodge electronically, a written submission by **midday on Thursday, 10 April 2020**. It is to be directed to registry@wairc.wa.gov.au
11. Attached are:
 - Schedule A being the proposed appendix to be inserted into awards;
 - Schedule B being a list of awards provisionally intended to be varied by the proposed General Order.

Schedule A – Provisions relating to the COVID-19 pandemic

1. Unpaid pandemic leave

- a) Subject to subclauses (b) and (c), any employee may elect to take up to two weeks' unpaid leave if the employee is required, by government or medical authorities or acting on medical advice, to self-isolate or is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic in circumstances where the employee is required to work at premises operated by an employer.
- b) The employee must give their employer notice of the taking of leave under subclause (a) and of the reason the employee requires the leave, as soon as practicable. This may be a time after the leave has started.
- c) The employee who has given their employer notice of taking leave under subclause (a) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a reason given in subclause (a).
- d) Leave taken under subclause (a) does not affect any other paid or unpaid leave entitlement of the employee and counts as service for the purposes of entitlements under this Award.
- e) Such leave:
 - (i) is available in full immediately rather than accruing progressively during any period of service;
 - (ii) will be available until 30 June 2020 (unless extended by further variation depending on the duration of the COVID-19 pandemic); and
 - (iii) Will be available to full time, part time and casual employees (it is not pro-rata).
- (f) It will not be necessary for employees to exhaust their paid leave entitlements before accessing unpaid pandemic leave.

- (g) Such unpaid leave does not operate on a 'per occasion' basis and is available only once for those employees compelled to self-isolate, even if they are required to self-isolate on more than one occasion.
- (h) Those caring for others who are compelled to self-isolate are not entitled to unpaid pandemic leave.

2. Annual leave at half pay

- a) Instead of an employee taking paid annual leave on full pay, the employee and their employer may agree to the employee taking twice as much leave on half pay. Example: Instead of an employee taking one week's annual leave on full pay, the employee and their employer may agree to the employee taking two weeks' annual leave on half pay. In this example:
 - The employee's full pay for the two weeks' leave is the same as the pay the employee would have been entitled to for one week's leave on full pay (including leave loading where appropriate); and
 - One week of leave is deducted from the employee's annual leave accrual.
- b) Any agreement to take twice as much annual leave at half pay must be recorded in writing and retained as part of the employee's employment record.

3. Granting annual leave in advance

- a) An employee may take a period of annual leave in advance if all of the following conditions are met:
 - (i) The employer and employee must make a written agreement to the employee taking the period of leave in advance;
 - (ii) The written agreement must state the amount of leave to be taken in advance and the date on which the leave will commence; and
 - (iii) The written agreement must be signed by both the employer and the employee (and a parent/guardian if the employee is under 18).
- b) The employer must keep a copy of the written agreement as part of the employee's employment record.

Schedule B – Awards

Award Name	Award No
Aboriginal Medical Service Employees' Award	A 26/1987
Aboriginal Communities and Organisations Western Australian Interim Award 2011	A 1/2011
Aerated Water and Cordial Manufacturing Industry Award 1975	27668
Aged and Disabled Persons Hostels Award, 1987	A 6/1987
Air Conditioning and Refrigeration Industry (Construction and Servicing) Award No. 10 of 1979	R 10/1979
Ambulance Service Employees' Award, 1969	50/1968
Animal Welfare Industry Award	25051
Artworkers Award	A 30/1987
Australian Workers Union Road Maintenance, Marking and Traffic Management Award 2002 - The	A 4/04
Bag, Sack and Textile Award	21976
Bakers' (Country) Award No. 18 of 1977	R 18/1977
Bakers' (Metropolitan) Award No. 13 of 1987	A 13/1987
Bespoke Bootmakers' and Repairers' Award No. 4 of 1946	16893
Breadcarters (Country) Award 1976	R 17/1975
Breadcarters' (Metropolitan) Award	35/1963
Brick Manufacturing Award 1979	R 19/1979
Brushmakers' Award No. 30 of 1959	30/1959
Building and Engineering Trades (Nickel Mining and Processing) Award, 1968	20/1968
Building Trades (Construction) Award 1987	R 14/1978
Building Trades Award 1968	31/1966
Case and Box Makers' Award, 1952	48/1951
Catering Employees and Tea Attendants (Government) Award 1982	A 34/1981
Child Care (Lady Gowrie Child Centre) Award	A 3/1984
Child Care (Out of School Care - Playleaders) Award	A 13/1984
Child Care (Subsidised Centres) Award	A 26/1985
Children's Services (Government) Award 1989	A 29/1985 & PSA A 29A/1985
Children's Services (Private) Award 2006	A 10/1990
Children's Services Consent Award 1984	A 1/1985
Cleaners and Caretakers (Car and Caravan Parks) Award 1975	27515
Cleaners and Caretakers (Government) Award 1975	32/1975
Cleaners and Caretakers Award, 1969	25538
Clerks (Unions and Labor Movement) Award 2004	A 10/96
Clothing Trades Award 1973	16/1972
Clerks (Commercial, Social and Professional Services) Award No. 14 of 1972	14/1972
Clerks (Timber) Award	61/1947
Clerks' (Accountants' Employees) Award 1984	A 8/1982
Clerks (Bailiffs' Employees) Award 1978	R 19/1976
Clerks' (Customs and/or Shipping and/or Forwarding Agents) Award	47/1948

Award Name	Award No
Clerks' (Grain Handling) Award, 1977	R 34/1977
Clerks' (Hotels, Motels and Clubs) Award 1979	R 7/1977
Clerks (Racing Industry - Betting) Award 1978	R 22/1977
Clerks' (Wholesale & Retail Establishments) Award No. 38 of 1947	38/1947
Club Workers' Award	28095
Commercial Travellers and Sales Representatives' Award 1978	R 43/1978
Community Colleges Award, 1990	A 19/1988(R)
Community Welfare Department Hostels Award 1983	A 27/1981
Contract Cleaners Award, 1986	A 6/1985
Contract Cleaners' (Ministry of Education) Award, 1990	A 5/1981
Crisis Assistance, Supported Housing Industry - Western Australian Interim Award 2011	A 2/2011
Cultural Centre Award 1987	A 28/1988
Dairy Factory Workers' Award 1982	A 15/1982
Deckhands (Passenger Ferries, Launches and Barges) Award	15/1972
Dental Technicians' and Attendant/Receptionists' Award, 1982	29/1982
Draughtsmen's, Tracers', Planners' and Technical Officers' Award 1979 - The	R 11/1979
Dried Vine Fruits Industry Award, 1951 - The	18841
Drum Reclaiming Award	21/1961
Dry Cleaning and Laundry Award 1979	R 35/1978
Earth Moving and Construction Award	23285
Egg Processing Award 1978	R 42/1978
Electorate Officers Award 1986	A 18/1986
Electrical Contracting Industry Award R 22 of 1978	R 22/1978
Electrical Trades (Security Alarms Industry) Award, 1980	R 27/1979
Electronics Industry Award No. A 22 of 1985	A 22/1985
Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973	20/1973
Engine Drivers' (General) Award	R 21A/1977
Engine Drivers' (Gold Mining) Consolidated Award, 1979	37/1947
Engine Drivers' (Nickel Mining) Award 1968	37/1968
Engine Drivers' Minerals Production (Salt) Industry Award, 1970	43/1968
Engineering Trades (Government) Award, 1967 Award Nos. 29, 30 and 31 of 1961 and 3 of 1962	29/1961, 30/1961, 31/1961 & 3/1962
Enrolled Nurses and Nursing Assistants (Government) Award	R 7/1978
Enrolled Nurses and Nursing Assistants (Private) Award No 8 of 1978	28703
Family Day Care Co-Ordinators' and Assistants' Award, 1985	A 16/1985
Farm Employees' Award 1985	A 19/1984
Fast Food Outlets Award 1990	A 14/1990
Fire Brigade Employees (Workshops) Award 1983	A 6/1981
Fire Brigade Employees' Award, 1990, No. A 28 of 1989	A 28/1989
Food Industry (Food Manufacturing or Processing) Award	A 20/1990
Foremen (Building Trades) Award 1991	A 5/1987
Fruit and Produce Market Employees Award No. 50 of 1955	50/1955

Award Name	Award No
Funeral Directors' Assistants' Award No. 18 of 1962	18/1962
Furniture Trades Industry Award	A 6/1984
Prison Officers' Award	25173
Gardeners (Government) 1986 Award No. 16 of 1983	A 16/1983
Gate, Fence and Frames Manufacturing Award	24/1971
Golf Link and Bowling Green Employees' Award, 1993	16/1967
Hairdressers Award 1989	A 32/1988
Health Attendants Award, 1979	A 49/1978
Health Workers - Community and Child Health Services Award, 1980	R 21/1979
Horticultural (Nursery) Industry Award No. 30 of 1980 - The	A 30/1980
Hospital Salaried Officers (Dental Therapists) Award, 1980	R 27/1977
Hospital Salaried Officers (Nursing Homes) Award 1976	R18/1974 & R19/1974
Hospital Salaried Officers (Private Hospitals) Award, 1980	R28/1977
Hospital Workers (Cleaning Contractors - Private Hospitals) Award 1978	R 2/1977
Hospital Workers (Government) Award No. 21 of 1966	21/1966
Hospital Workers' (N'Gala) Award No. 6A of 1958	6A/1958
Hotel and Tavern Workers' Award	R 31/1977
Independent Schools (Boarding House) Supervisory Staff Award	A 9/1990
Independent Schools' Teachers' Award 1976	R 27/1976
Industrial Spraypainting and Sandblasting Award	A 33/1987
Independent Schools Administrative and Technical Officers Award 1993	A 15/1991
Independent Schools Psychologists and Social Workers Award	A 3/96
Juvenile Custodial Officers' Award	28185
Iron Ore Production & Processing (Locomotive Drivers) Award 2006 - The	A 3/05
Iron Ore Production & Processing (Locomotive Drivers Rio Tinto Railway) Award 2006	A 5/05
Landscape Gardening Industry Award	R 18/1978
Laundry Workers' Award, 1981	A 29/1981
Licensed Establishments (Retail and Wholesale) Award 1979	R 23/1977
Local Government Officers' (Western Australia) Interim Award 2011	A 4/2010
Marine Stores Award	13/1958
Masters, Mates and Engineers Passenger Ferries Award	A 9/96
Meat Industry (State) Award, 2003	R 9/1979
Mental Health Nurses' Consolidated Award 1981 No. 13 of 1947	13/1947
Metal Trades (General) Award	13/1965
Mineral Sands Industry Award 1991	A 3/1991
Miscellaneous Workers' (Activ Foundation) Award	A 20/1980
Miscellaneous Government Conditions and Allowances Award No A 4 of 1992	A 4/1992
Building Trades (Government) Award 1968	31A/1966
Country High School Hostels Award, 1979	R 7A/1979
Fruit Growing and Fruit Packing Industry Award - The	R 17/1979

Award Name	Award No
Monumental Masonry Industry Award, 1989	A 36/1987
Motel, Hostel, Service Flats and Boarding House Workers' Award	29/1974
Motor Vehicle (Service Station, Sales Establishments, Rust Prevention and Paint Protection) Industry Award No. 29 of 1980	A 29/1980
Municipal Employees (Western Australia) Interim Award 2011	A 2/2010
Musicians' General (State) Award 1985	A 5/1985
Nurses (Child Care Centres) Award 1984	A 23/1984
Nurses (Dentists Surgeries) Award 1977	44A/1976
Nurses (Doctors Surgeries) Award 1977	44/1976
Nurses' (ANF-RFDS Western Operations) Award	A 18/1982
Nurses' (Aboriginal Medical Services) Award No. A 23 of 1987	A 23/1987
Nurses' (Day Care Centres) Award	R 11/1976
Nurses' (Independent Schools) Award	21B/1962
Nurses' (Private Hospitals) Award	24108
Optical Mechanics' Award, 1971	25812
Parliamentary Employees Award 1989	A 15/1987, A 4/1988, A 7/1988 & A 7/1989
Particle Board Employees' Award, 1964	22/1964
Particle Board Industry Award No. 10 of 1978	R 10/1978
Pastrycooks' Award No. 24 of 1981	A 24/1981
Performers Live Award (WA) 1993	A 18/1989
Pest Control Industry Award	A 9/1982
Photographic Industry Award, 1980	A 9/1980
Pipe, Tile and Pottery Manufacturing Industry Award	R 34/1978
Plaster, Plasterglass and Cement Workers' Award No. A 29 of 1989	A 29/1989
Plywood and Veneer Workers Award	A 28/1981
Plywood and Veneer Workers' Award, 1952	24/1952
Police Award 1965 - The	24139
Port Hedland Port Authority Port Control Officers Award 1982	A 1/1982
Poultry Breeding Farm & Hatchery Workers' Award 1976	R 20/1976
Printing Award	25447
Printing Industry Superannuation Award 1991	A 6/1991
Private Hospital Employees' Award, 1972	27/1971
Prospector and AvonLink on Train Customer Service Officers Award	A 10/03
Psychiatric Nurses' (Public Hospitals) Award 1973	14/1973
Public Transport Authority Rail Car Drivers (Transperth Train Operations) Award 2006	A 1/06
Public Transport Authority (Transwa) Award 2006	A 2/06
Quarry Workers' Award, 1969	13/1968
Quadriplegic Centre Award	A 1/1993
Radio and Television Employees' Award	R 3/1980
Railway Employees' Award No. 18 of 1969	18/1969
Rangers Consolidated Award 2000	A 17/1981
Recreation Camps (Department for Sport and Recreation) Award	A 28/1985

Award Name	Award No
Restaurant, Tearoom and Catering Workers' Award	R 48/1978
Retail Pharmacists' Award 2004	A 8/04
Rock Lobster and Prawn Processing Award 1978 - The	R 24/1977
Rope and Twine Workers' Award	23316
Saddlers and Leatherworkers' Award	22828
Salaried Officers (Association for the Blind of Western Australia) Award, 1995	A 5/95
Saw Servicing Establishments Award No. 17 of 1977	17/1977
School Employees (Independent Day & Boarding Schools) Award, 1980	R 7/1979
Security Officers' Award	A 25/1981
Sheet Metal Workers' Award No. 10 of 1973	26938
Shearing Contractors' Award of Western Australia 2003	A 2/03
Ship Painters' and Dockers' Award No 29 of 1960	29/1960
Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 - The	R 32/1976
Show Grounds Maintenance Worker's Award	55/1968
Soap and Allied Products Manufacturing Award	25/1960
Social Trainers (Nulsen Haven) Award	A 11/1985
Social Trainers and Assistant Supervisors' (Activ Foundation) Award	A 15/1984
Social and Community Services (Western Australia) Interim Award 2011	A 3/2010
Soft Furnishings Award	A 23/1982
State Research Stations, Agricultural Schools and College Workers Award	23/1971
Storemen (Government) Consolidated Award 1979	20/1969
Supported Employees Industry Award	A 1/1988
Teachers' Aides' (Independent Schools) Award 1988	A 27/1987
Teachers' Aides' Award, 1979	R 4/1979
Theatrical Employees (Perth Theatre Trust) Award No. 9 of 1983	A 9/1983
Theatrical Employees Entertainment, Sporting and Amusement Facilities (Western Australian Government) Award 1987	A 28/1987
Thermal Insulation Contracting Industry Award	28491
Timber Workers Award No. 36 of 1950	36/1950
Timber Yard Workers Award No. 11 of 1951	18933
Training Assistants' and Community Support Staff (Cerebral Palsy Association) Award 1987	A 16/1986
Transport Workers (Government) Award, 1952	2A/1952
Transport Workers (Mobile Food Vendors) Award 1987	A 3/1986
Transport Workers (General) Award No. 10 of 1961	22555
Transport Workers' (North West Passenger Vehicles) Award, 1988	A 19/1987
Transport Workers' (Passenger Vehicles) Award	R 47/1978
University, Colleges and Swanleigh Award, 1980	R 7B/1979
Vehicle Builders' Award 1971	26177
WA Government Health Services Engineering and Building Services Award 2004	A 2/04
Ward Assistants (Mental Health Services) Award 1966	35/1966

Award Name	Award No
Watchmakers' and Jewellers' Award, 1970	25842
Western Australian Surveying (Private Practice) Industry Award, 2003 - The	A 2/88
West Australian Petroleum Pty Ltd Long Service Leave Conditions Award 1991	A 12/1991
Western Australian Professional Engineers (General Industries) Award 2004 - The	A 3/04
Wine Industry (WA) Award 2005	31/1969
Wool, Hide and Skin Store Employees' Award No. 8 of 1966	24320
Zoological Gardens Employees award	29/1969