

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Further Submission

Annualised Wage Arrangements
(AM2016/13)

10 April 2019

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GROUP

4 YEARLY REVIEW OF MODERN AWARDS AM2016/13 – ANNUALISED WAGE ARRANGEMENTS

1. INTRODUCTION

1. This submission is filed in accordance with the directions in paragraph [64] of the Fair Work Commission’s decision of 27 February 2019¹ (**February 2019 Decision**) in the *4 Yearly Review of Modern Awards – Annualised Wage Arrangements Case*, as varied in correspondence dated 27 and 28 March 2019.
2. In Ai Group’s submission of 26 March 2018 (**Ai Group’s March 2018 Submission**), Ai Group expressed significant concerns about the loss of flexibility for employers and employees that would result from implementing each of the four model annualised wage clauses that the Commission had developed, and which were set out in the Commission’s decision of 20 February 2018² (**February 2018 Decision**).
3. The Commission has decided to proceed with two of the model clauses set out in the February 2018 Decision (Model Clause 1 and Model Clause 3) despite the strong opposition of Ai Group to elements of those model terms.
4. The Commission has decided that Model Clause 1, as set out in paragraph [130] of the February 2018 Decision, will, subject to some modifications for specific awards, become the standard annualised wage arrangements provision for those awards which currently contain an annualised wage arrangements provision and under which employees generally work relatively stable hours of work. The Commission has decided to proceed on the *prima facie* basis that this category of awards (**Category 1**) consists of those which currently do not require the agreement of the employee to enter into an annualised wage arrangement, namely:
 - The *Banking, Finance and Insurance Award 2010*;

¹ [2019] FWCFB 1289.

² [2018] FWCFB 154.

- The *Clerks - Private Sector Award 2010* (**Clerks Award**);
- The *Contract Call Centres Award 2010* (**Contract Call Centres Award**);
- The *Hydrocarbons Industry (Upstream) Award 2010*;
- The *Legal Services Award 2010* (**Legal Services Award**);
- The *Mining Industry Award 2010*;
- The *Oil Refining and Manufacturing Award 2010* (clerical employees only);
- The *Salt Industry Award 2010*;
- The *Telecommunications Services Award 2010*;
- The *Water Industry Award 2010*; and
- The *Wool Storage, Sampling and Testing Award 2010*.

5. Further, the Commission has decided that Model Clause 3, as set out in paragraph [132] of the February 2018 Decision, will become the standard annualised wage arrangements provision for those awards which currently contain an annualised wage arrangements provision and under which employees work highly variable hours or significant ordinary hours which attract penalty rates under the award, as well as for the *Pastoral Award 2010* (**Pastoral Award**) and the *Horticulture Award 2010* (**Horticulture Award**). This will again be subject to modifications for specific awards. The awards in this category (**Category 2**) will, on a *prima facie* basis, include the following awards (in addition to the Pastoral Award and the Horticulture Award):

- The *Broadcasting and Recorded Entertainment Award 2010*;
- The *Local Government Industry Award 2010*;
- The *Manufacturing and Associated Industries and Occupations Award 2010*;

- The *Oil Refining and Manufacturing Award 2010* (non-clerical employees);
 - The *Pharmacy Industry Award 2010*; and
 - The *Rail Industry Award 2010*.
6. The February 2019 Decision invites submissions on the following issues:
- a. Any evidence and submissions concerning whether any of the modern awards listed in paragraph [53] of the Decision, other than the Clerks Award, the Legal Services Award or the Contract Call Centres Award, should be moved to Category 2;
 - b. Any evidence and submissions concerning whether any of the modern awards listed in paragraph [56] of the Decision, not including the Pastoral Award and the Horticultural Award, should be moved to Category 1;
 - c. Any submissions concerning whether the *Health Professionals and Support Services Award 2010* (**Health Professionals Award**) should be varied to include Model Clause 3 or whether the application of Ai Group in respect of this award should be dismissed; and
 - d. Any submissions concerning the need for transitional provisions consequent upon the adoption of the standard annualised wage arrangement provisions.
7. In addition to addressing the matters in points a, c and d above, Ai Group proposes a couple of minor but important modifications to Model Clause 1 and Model Clause 3, to increase clarity and to improve fairness for employers and employees.

2. PROPOSED MINOR MODIFICATIONS TO MODEL CLAUSE 1 AND MODEL CLAUSE 3

8. For the reasons explained below, Ai Group proposes the following minor modifications to Model Clauses 1 and 3:

MODEL CLAUSE 1:

X. Annualised wage arrangements

X.1 *Annualised wage instead of award provisions*

- (a) An employer may pay a full-time employee an annualised wage in satisfaction, subject to clause X.1(c), of any or all of the following provisions of the award:
- (i) clause X – Minimum weekly wages;
 - (ii) clause X – Allowances;
 - (iii) clause X – Overtime penalty rates
 - (iv) clause X – Weekend and other penalty rates; and
 - (iv) clause X – Annual leave loading
- (b) Where an annualised wage is paid the employer must advise the employee in writing, and keep a record of:
- (i) the annualised wage that is payable;
 - (ii) which of the provisions of this award will be satisfied by payment of the annualised wage;
 - (iii) the method by which the annualised wage has been calculated, including specification of each separate component of the annualised wage and any overtime or penalty assumptions used in the calculation; and
 - (iv) the outer limit number of ordinary hours which would attract the payment of a penalty rate under the award and the outer limit number of overtime hours which the employee may be required to work in a pay period or roster cycle without being entitled to an amount in excess of the annualised wage in accordance with clause X.1(c).
- (c) If in a pay period or roster cycle an employee works any hours in excess of either of the outer limit amounts specified pursuant to clause X.1(b)(iv), such hours will not be covered by the annualised wage and must separately be paid for in accordance with the applicable provisions of this award.

X.2 *Annualised wage not to disadvantage employees*

- (a) The annualised wage must be no less than the amount the employee would have received under this award for the work performed over the year for which the wage is paid (or if the employment ceases earlier over such lesser period as has been worked).
- (b) The employer must each 12 months from the commencement of the annualised wage arrangement or upon the termination of employment of the employee calculate the amount of remuneration that would have been payable to the employee under the provisions of this award over the relevant period and compare it to the amount of the annualised wage actually paid to the employee. Where the latter amount is less than the former amount, the employer shall pay the employee the amount of the shortfall within 14 days.
- (c) The employer must keep a record of the starting and finishing times of work, and any unpaid breaks taken, of each employee subject to an annualised wage arrangement for the purpose of undertaking the comparison required by clause X.2(b). This record must be signed by provided to the employee by the employer each pay period or roster cycle.

Note: For the purposes of this clause work means ordinary hours of work and any overtime that the employer requires the employee to work.

X.3 *Base rate of pay for employees on annual salary arrangements*

For the purposes of the NES, the base rate of pay of an employee receiving an annual salary under this clause comprises the portion of the annual salary equivalent to the relevant rate of pay in clause X—Minimum weekly wages and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.

X.4 *Scope of this clause*

This clause only regulates award entitlements of employees who are paid an annualised wage under the provisions of this clause.

MODEL CLAUSE 3:

X. Annualised wage arrangements

X.1 Annualised wage instead of award provisions

- (a) An employer and a full-time employee may enter into a written agreement for the employee to be paid an annualised wage in satisfaction, subject to clause X.1(c), of any or all of the following provisions of the award:
 - (i) clause X – Minimum weekly wages;
 - (ii) clause X – Allowances;
 - (iii) clause X – Overtime penalty rates

- (iv) clause X – Weekend and other penalty rates; and
- (iv) clause X – Annual leave loading
- (b) Where a written agreement for an annualised wage agreement is entered into, the agreement must specify:
 - (i) the annualised wage that is payable;
 - (ii) which of the provisions of this award will be satisfied by payment of the annualised wage;
 - (iii) the method by which the annualised wage has been calculated, including specification of each separate component of the annualised wage and any overtime or penalty assumptions used in the calculation; and
 - (iv) the outer limit number of ordinary hours which would attract the payment of a penalty rate under the award and the outer limit number of overtime hours which the employee may be required to work in a pay period or roster cycle without being entitled to an amount in excess of the annualised wage in accordance with clause X.1(c).
- (c) If in a pay period or roster cycle an employee works any hours in excess of either of the outer limit amounts specified in the agreement pursuant to clause X.1(b)(iv), such hours will not be covered by the annualised wage and must separately be paid for in accordance with the applicable provisions of this award.
- (d) The employer must give the employee a copy of the agreement and keep the agreement as a time and wages record.
- (e) The agreement may be terminated:
 - (i) by the employer or the employee giving 12 months' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or
 - (ii) at any time, by written agreement between the employer and the individual employee.

X.2 Annualised wage not to disadvantage employees

- (a) The annualised wage must be no less than the amount the employee would have received under this award for the work performed over the year for which the wage is paid (or if the employment ceases or the agreement terminates earlier, over such lesser period as has been worked).
- (b) The employer must each 12 months from the commencement of the annualised wage arrangement or, within any 12 month period upon the termination of employment of the employee or termination of the agreement, calculate the amount of remuneration that would have been

payable to the employee under the provisions of this award over the relevant period and compare it to the amount of the annualised wage actually paid to the employee. Where the latter amount is less than the former amount, the employer shall pay the employee the amount of the shortfall within 14 days.

- (c) The employer must keep a record of the starting and finishing times of work, and any unpaid breaks taken, of each employee subject to an annualised wage arrangement for the purpose of undertaking the comparison required by clause X.2(b). This record must be signed by provided to the employee by the employer each pay period or roster cycle.

Note: For the purposes of this clause work means ordinary hours of work and any overtime that the employer requires the employee to work.

X.3 *Base rate of pay for employees on annual salary arrangements*

For the purposes of the NES, the base rate of pay of an employee receiving an annual salary under this clause comprises the portion of the annual salary equivalent to the relevant rate of pay in clause X—Minimum weekly wages and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.

X.4 *Scope of this clause*

This clause only regulates award entitlements of employees who are paid an annualised wage under the provisions of this clause.

Proposed amendments to clause X.2(c)

Clarification that only *work* time is to be taken into account

9. Section 147 of the *Fair Work Act 2009 (FW Act)* states:

147 Ordinary hours of work

A modern award must include terms specifying, or providing for the determination of, the ordinary hours of work for each classification of employee covered by the award and each type of employment permitted by the award.

Note: An employee's ordinary hours of work are significant in determining the employee's entitlements under the National Employment Standards.

10. Given the requirements of s.147, all awards that have an annualised wage clause would include other award provisions that specify or provide for the determination of ordinary hours (typically an Hours of Work clause).

11. As stated in the Note in s.147, an employee's ordinary hours of work are significant in determining the employee's entitlements under the National Employment Standards. Ordinary hours are also significant in determining entitlements under superannuation, long service leave and workers' compensation laws.
12. The concept of ordinary hours is well-understood in the workplace relations system. The concept of overtime is equally well-understood as time that an employee is required by the employer to work.
13. In the Australian Industrial Relations Commission's (**AIRC's**) *Reasonable Hours Case Decision*³, a five Member Full Bench of the Commission (Giudice P, Ross VP, McIntyre VP, Gay C and Foggo C) relevantly said:

[49]The distinction between ordinary hours and overtime is one which is deeply embedded in the Commission's awards and agreements.
14. The standard reasonable hours clause that arose from the *Reasonable Hours Case* only relates to overtime that "*an employer may require an employee to work*". This clause was recently reformulated through the *4 Yearly Review of Modern Award – Plain Language Re-drafting – Reasonable Overtime* proceedings. The new Reasonable Overtime Model Term only deals with overtime that "*an employer may require an employee...to work*".⁴
15. Similarly, s.62 of the FW Act only relates to additional hours that an employer requires or requests an employee to work.
16. It is important that Model Clause 1 and Model Clause 3 clarify that the time that is to be recorded is *work* time, and not any other time that an employee may choose to spend in the workplace (e.g. in interacting with colleagues before the work day starts or after the work day ends).

³ PR072002.

⁴ [2018] FWCFB 6680, [20].

Inconsistency of the signing requirement with contemporary pay records and payroll systems

17. As currently drafted, clause X.2(c) is inconsistent with the pay record systems and payroll systems that operate in most companies. The vast majority of businesses have electronic pay record and payroll systems. A requirement for employees to physically sign a record of the hours worked would impose a very onerous regulatory burden on most businesses.
18. If paragraph X.2(c) in the Model Clauses simply required that the employer provide to the employee a record of the hours worked by the employee, the employee would have the opportunity to express any disagreement with the record. This would align with the process that applies to, and the purpose of, pay slips.

Proposed amendments

19. To address the above issues, the following amended wording is proposed for clause X.2(c) in Model Clause 1 and Model Clause 3:

- (c) The employer must keep a record of the starting and finishing times of work, and any unpaid breaks taken, of each employee subject to an annualised wage arrangement for the purpose of undertaking the comparison required by clause X.2(b). This record must be signed by provided to the employee by the employer each pay period or roster cycle.

Note: For the purposes of this clause work means ordinary hours of work and any overtime that the employer requires the employee to work.

Importance of clarifying the scope of the Model Clauses

20. It is very common for employees to be engaged under common law employment contracts which include a “set-off” clause, similar to the following:

The rate of pay prescribed in clause X, will be applied firstly in payment of any award and/or legislative entitlements, including at the time of termination of employment. The balance of such payment may vary from pay period to pay period depending on award and/or legislative entitlements payable in that pay period.

21. In the vast majority of cases, the award-covered employees engaged under employment contracts with “set-off” provisions are not engaged under an annualised wage clause in an award.

22. In *Linkhill Pty Ltd v Director, Office of the Fair Work Building Industry Inspectorate* (2015) FCAFC 99 (**Linkhill**), North and Bromberg JJ stated:

A body of jurisprudence has developed which explains how payments made to employees are to be taken into account in claims for amounts due under industrial awards or instruments.

23. The judgment of North and Bromberg JJ in *Linkhill* includes a lengthy discussion of the leading authorities relating to the above issue, including:

- The Industrial Commission of NSW decision in *Ray v Radano* [1967] AR (NSW) 471;
- The Industrial Commission of NSW decision in *Pacific Publications Pty Ltd v Cantlon* (1983) 4 IR 415;
- The decision of the Federal Court of Australia (Keely J) in *Lynch v Buckley Sawmills Pty Ltd* (1984) 3 FCR 503;
- The decision of the Full Court of the Federal Court (Keely, Ryan and Gray JJ) in *Poletti v Ecob* (No.2) (1989) 31 IR 321;
- The decision of the Full Court of the Federal Court (Wilcox CJ, Marshall and Madgwick JJ) in *Logan v Otis Elevator Co Pty Ltd* (1999) 94 IR 218;
- The decision of the Full Court of the Federal Court (Black CJ, Wilcox and von Doussa JJ) in *Australia and New Zealand Banking Group Limited v Finance Sector Union of Australia* (2001) 111 IR 227; and
- The decision of the WA Industrial Appeal Court (Anderson, Scott and Parker JJ) in *James Turner Roofing Pty Ltd v Peters* [2003] WASCA 28.

24. In a separate judgment in *Linkhill*, White J stated:

The principles emerging from the line of authorities commencing with *Ray v Radano* indicate that, in a case like the present, close attention must be given to any agreement between the parties that a sum or sum of monies be paid for specific

purposes which are extraneous to award entitlements and to any designation by the employer of payment of the sum or sums for a purpose other than the satisfaction of award entitlements.

25. Given the complexity associated with the above matters, the Commission should avoid imposing even more complexity associated with the interaction between award clauses and common law “set-off” principles. Imposing even more complexity would increase the burden on employers, employees, regulators (e.g. the FWO and the ABCC) and courts.
26. The Commission should implement an award term facilitating annualised wage arrangements that enable certain award derived obligations to be met or satisfied, but it should ensure that such a provision does not invalidate or regulate any common law contractual arrangement that parties may separately implement.
27. To address the above issue, the following additional subclause is proposed for Model Clause 1 and Model Clause 3:

X.4 Scope of this clause

This clause only regulates award entitlements of employees who are paid an annualised wage arrangement under the provisions of this clause.

28. The inclusion of the above provision in the Model Clauses would be consistent with the decision⁵ of a seven Member Full Bench of the AIRC in relation to an ASU application to vary the annualised salary clause in the Clerks Award. The ASU sought to remove the flexibility for employers and employees to agree to annual salary arrangements through common law contracts. In rejecting the application, the Full Bench said: (emphasis added)

[8] Awards operate in conjunction with contracts of employment. It is generally accepted that clerical employees are commonly remunerated by way of annualised salaries whether the relevant award expressly provides for such arrangements or not. It is also generally accepted that if the salary is expressly paid in compensation of all award entitlements and the amount paid exceeds the amount due under the award then the arrangement is not inconsistent with the award. The intention of the ASU in

⁵ [2010] FWAFB 969.

making its application is that the only arrangements which can legally be entered into are those expressly provided for in the award.

[9] It is apparent that the terms of the relevant awards and NAPSAs were taken into account in formulating the annualised salaries clause in the Commission's decision of 16 November 2009. We believe that the safeguards in the modern award are appropriate in the circumstances of clerical employment. Further, we are concerned that the variation sought by the ASU may reduce existing flexibility and require changes in practices which have operated for many years. The ASU has not made a case for imposing a limitation on existing arrangements.

[10] For the above reasons the application is dismissed.

3. HEALTH PROFESSIONALS AWARD

29. Ai Group has made the following detailed submissions in support of the inclusion of an annualised salary clause in the *Health Professionals and Support Services Award 2010*:

- Ai Group's [submission of 10 October 2016](#);
- [Oral submissions at the hearing on 7 December 2016](#).

30. In the February 2018 Decision, the Full Bench stated:

Health Professionals and Supported Services Award 2010

[141] We are not satisfied that the *Health Professionals Award* should be varied to include the annualised wage arrangement provision proposed by the Ai Group. Having regard to our earlier general conclusions, we do not consider that the proposed provision complies with the requirement in s 139(1)(f)(iii) or meets the modern awards objective for the following reasons:

- (1) The employees to be covered by the proposed provision work, as submitted by United Voice, complex rosters covering unsociable hours. As a result, shift loadings and penalty rate payments constitute a significant element of their overall remuneration. Because the interests of the employee would be so critically affected by the introduction of an annualised wage arrangement, we consider that fairness would require the agreement of the employee.
- (2) The provision does not require the annualised wage to be transparently constructed on the basis of the award entitlements to shift allowances and penalty rates and reasonable assumptions about the number and pattern of working hours. Nor does it provide for any safeguards if working hours diverge significantly from any such assumptions.
- (3) The annual review mechanism is inadequate for reasons already stated.

[142] However we see no reason in principle why managerial or supervisory-level employees should not have access to an annualised salaries provision in appropriate form. We invite the Ai Group, United Voice and other interested parties to lodge submissions in accordance the timetable at the end of this submission as to whether, in relation to the classes of employees encompassed by the Ai Group's claim, Model Clause 3 or Model Clause 4 should be introduced into the *Health Professionals Award*.

31. In the February 2018 Decision, the Full Bench stated:

[59] With respect to the *Health Professionals Award*, we are prepared to vary that award to include an annualised wage arrangements provision that is applicable to managerial or supervisory employees only and is otherwise in the form of Model Clause 3. We will invite further submissions from interested parties as to whether we should proceed to take this course or otherwise, having regard to the conclusions stated in paragraph [141] of the 2018 decision, we should simply dismiss the Ai Group's application for an annualised wage arrangements provision to be added to this award.

32. Ai Group submits that Model Clause 3, with the minor amendments proposed in section 2 of this submission, should be inserted into the Health Professionals Award for managerial and supervisory employees.

33. The concerns that the Full Bench raised (as set out in paragraph [141] of the February 2018 Decision) about the annualised salary clause that Ai Group proposed in the draft determination that we filed on 10 October 2016, have been comprehensively addressed in Model Clause 3.

4. TRANSITIONAL PROVISIONS

34. Ai Group Members have expressed significant concerns to Ai Group about their ability to comply with the record keeping requirements in Model Clause 1 and Model Clause 3 given their existing payroll systems and processes. Many businesses will need to make substantial changes and incur significant costs in order to comply with the new clauses. Achieving compliance will require significant lead time.

35. In many instances the new clauses will necessitate the implementation of new technology or processes in order to capture and record the time that employees work. There are a diverse range of ways in which such matters are approached by businesses and the particular course adopted will often depend upon enterprise specific considerations.

36. Some employers anticipate implementing technology such as fingerprint scanning systems or systems that require people to sign in at work by 'clocking on' through electronic systems at the work site. Others might be expected to utilise manual systems such as time sheets. Identifying, selecting and installing appropriate systems, as well as training employees on their use, will take time.
37. Even where employers currently utilise such systems for part of their workforce, there will often be a need to implement additional systems for use by the employees covered by the annualised wage clauses which are the subject of the current proceedings. For example, it is not uncommon for employers in the manufacturing industry to engage employees undertaking production processes to work in physically or geographically distinct locations to the employees engaged in administrative or clerical functions.
38. For employers who do not require that their employees attend a central or particular location for work, different approaches will need to be taken. Some Ai Group members have suggested to us that they will likely seek to develop and implement appropriate 'Apps' or computer-based mechanisms to provide a record of when relevant award covered employees are working.
39. Beyond implementing systems to record time worked, there will also commonly be a need to amend payroll processes or systems to meet the requirements of the new clauses. This will in some cases necessitate programming changes to currently utilised enterprise specific payroll systems. Such systems will often need amendment to ensure the various elements of the Model Clauses are addressed (i.e. to deal with the application of relevant award provisions when outer limit hours are exceeded, or to facilitate the required reconciliation processes). There will also be a need to facilitate the integration of the payroll system with whatever approach or technology is utilised to capture the time at which work is performed.
40. Some employers will need to hire additional staff in order to cope with the substantial administrative requirements flowing from the new provisions.

41. There will of course be additional costs associated with implementing the kinds of changes described above. We understand that for some employers this will likely extend to many hundreds of thousands of dollars.
42. For all of the above cited reasons, it fair that employers be afforded a reasonable period of time to consider the implications of the award changes, in their specific circumstances, and to determine and implement the changes that are necessary to meet the new requirements.
43. The award variations should take effect not earlier than 12 months after the terms of the final variations are determined by the Commission. That is, employers should be given 12 months' notice of the proposed commencement date for the new provisions. This transitional arrangement would be fair on employers and employees and would be consistent with the modern awards objective – particularly the need for the Commission to take into account “the likely impact of an exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden”.
44. The provision of 12 months' lead time would be consistent with the approach that the Commission took in the *4 Yearly Review of Modern Awards – Annual Leave* proceedings.⁶ The final Excessive Annual Leave provisions did not come into operation until 12 months after the award variations were finally determined. In its decision of 23 May 2016,⁷ the Full Bench relevantly stated: (emphasis added)

[84] In the proceedings following the *June 2015 decision* a number of submissions were advanced in relation to clause 1.2(c) of the model term. Clause 1.2(c) sets out the circumstances in which an employee may require their employer to grant them a period of paid annual leave. Relevantly for present purposes, Ai Group advanced the proposition that clause 1.2(c) not commence until 12 months after the commencement of the balance of the clause, in order to address situations where a significant proportion of an employer's workforce currently has excessive leave accruals.

⁶ [2015] FWCFB 3406; [2015] FWCFB 5771; [2016] FWCFB 3177; and [2016] FWCFB 3953.

⁷ [2016] FWCFB 3177.

[85] In the *September 2015 decision* the Commission concluded that the transitional arrangement proposed by Ai Group had merit:

'We acknowledge that a provision such as subclause 1.2(c) is a significant change to the modern award system and it is appropriate that employers are provided with some lead time to adjust. Subclause 1.2(c) will commence operation 12 months after the commencement of subclauses 1.2(a) and (b).''

45. Similar to the new Excess Annual Leave provisions that have been inserted into awards, the changes to existing annualised salary provisions would represent *"a significant change to the modern award system and it is appropriate that employers are provided with some lead time to adjust"*.
46. When a seven Member Full Bench of the AIRC decided to make amendments to the exemption rate / annualised salary provisions of the Clerks Award in a decision of 16 November 2009,⁸ a transitional provision was implemented that enabled employers to continue to apply existing arrangements until 30 June 2010 (i.e. for a further 7.5 months).⁹ The changes made were not as substantial as the changes that will result from the replacement of existing award annualised salary clauses with Model Clause 1 or Model Clause 3. Therefore, a 12-month transitional period is appropriate.
47. The proposed transitional period would also afford parties an opportunity to identify any unforeseen difficulties flowing from the new regime and, if warranted, raise with the Commission any consequential changes to individual awards that may be necessary.

⁸ [2009] AIRCFB 922.

⁹ [2009] AIRCFB 922; [26].