

# ACTUS WORKPLACE LAWYERS

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## **Federal Court confirms broad coverage of the Miscellaneous Award**

Justice Raper of the Federal Court of Australia has confirmed the broad coverage of the *Miscellaneous Award 2020 (Miscellaneous Award)*. In [Shergill v Singh \[2023\] FCA 1346](#), Raper J decided that a domestic worker (Ms Shergill) who carried out cooking, cleaning and gardening duties in the house of the Indian High Commissioner to Australia was an employee covered by the Miscellaneous Award.

In her judgment, Raper J highlighted the amendments that were made to the coverage terms of the Miscellaneous Award during the Fair Work Commission's 4 Yearly Review of Modern Awards. Since March 2020, the exclusion in clause 4.2 of the Award has only excluded the following categories of employees and no longer refers to "employees who have not traditionally been covered by awards":

*4.2 The award does not cover managerial employees and professional employees such as accountants and finance, marketing, legal, human resources, public relations and information technology specialists.*

Given the broad classification structure in the Miscellaneous Award (which includes four levels extending up to the advanced trade / sub-professional level) and the fact that none of the exclusions in the Award applied, Raper J decided that Ms Shergill was covered by the Award.

Employers need to be mindful that many of the positions they consider to be award-free may in fact be covered by a modern award. Particular care needs to be taken with positions that are not managerial or professional. Even if there is not another modern industry or occupational award that applies, the Miscellaneous Award could apply, depending upon the circumstances. Many underpayment claims pursued by the Fair Work Ombudsman, trade unions and plaintiff lawyers over recent years have related to employees who were being incorrectly treated as award-free by their employer.

For further information or assistance in relation to award matters, please contact Stephen Smith, Principal of Actus Workplace Lawyers, on 0418 461 183 or Email: [stephen.smith@actuslawyers.com.au](mailto:stephen.smith@actuslawyers.com.au).