



STATEMENT

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009
Part 2 of Schedule 5, item 6—Review of all modern awards (other than modern enterprise awards and State reference public sector modern awards) after first 2 years

Modern Awards Review 2012 – Part-day Public Holidays (AM2012/355)

COMMISSIONER HAMPTON

ADELAIDE, 27 SEPTEMBER 2013

Applications in relation to part day public holiday provisions in various Modern Awards as a result of legislative change in South Australia.

[1] The background to this matter is set out in the Statement¹ issued by the Full Bench on 12 September 2013 regarding part day public holiday provisions in various Modern Awards.

[2] As foreshadowed in that Statement, I convened a conference of interested parties on 26 September 2013 and have now heard the positions of many of the organisations that have participated in previous proceedings concerning these provisions.

[3] All of the parties appearing have supported the continuation of the interim arrangements to cover the Christmas and New Year part-day public holidays that will take place in South Australia later this year. However, the Australian Business Industrial (ABI) with the support of the Master Builders Association and The Restaurant and Catering Association² have raised some concerns about the operation of one element of the “model” provision that is found in many of the modern awards that were varied late last year.

[4] That element arises from a particular sub-clause³ that appears in most, but not all, of the Schedules now appearing in the 113 modern awards that were varied. Those concerns have been outlined in correspondence from the ABI dated 6 September 2013.

[5] Most of the other parties do not accept that these concerns are such that the further changes should be considered ahead of the 2014 Modern Award Review. There is also apprehension by these parties that the interim arrangements should not be opened up more generally. Further, the need for confirmation of the arrangements well ahead of the end of the year has been emphasised.

[6] Given the need for the Full Bench to deal with any outstanding issues and the desirability of limiting any such issues, I consider that an expedited process to permit the issues associated with the sub-clause concerned to be further ventilated between the parties would be appropriate.

[7] I would however observe that given the interim nature of the current provisions and the capacity for them to be comprehensively reviewed as part of the 2014 Modern Awards Review, any variations to the existing provisions would need to focus upon issues of substance. Further, care should be taken to ensure that any alternatives do not themselves create unintended uncertainties.

DIRECTIONS

1. ABI and any other party seeking to propose an alternative to the sub-clause in question is to provide a proposal to the other parties appearing at the conference on 26 September 2013 by no later than **Friday 4 October 2013**.
2. Any party wishing to comment on the proposals should do so by providing those comments to ABI and the other relevant organisations by **Friday 11 October 2013**.
3. Where possible, the parties should seek to resolve any outstanding issues by direct discussions.
4. All parties wishing to confirm their position with the Commission on these matters are to do so by notifying chambers.hampton.c@fwc.gov.au of that position by no later than **Friday 18 October 2013**. Copies of any such correspondence will be made available to all other parties by the Commission.
5. Liberty to apply is granted, including by seeking the resumption of the conference in this matter.

[8] I will prepare a Report for the Full Bench based upon the positions of the parties as known at that time.

[9] I would expect that the Full Bench will deal with these matters in early November 2013.



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<Price code A, PR542569>

¹ [2013] FWCFB 6916.

² The Restaurant and Catering Association also raised other issues however these go to the substance of the part-day public holidays rather than the interim provisions.

³ Sub-clause (g) in those modern awards varied by Determinations PR532630 and PR532631 and sub-clause (f) in those modern awards varied by Determination PR532628.