

From: Trevor Clarke <tclarke@actu.org.au>
Sent: Thursday, 25 March 2021 12:23 PM
To: AMOD <AMOD@fwc.gov.au>
Subject: AM2021/9 and AM2021/15: Extensions to Schedules X and Y
Importance: High

Good afternoon,

I refer to the above matters.

The applications recently lodged with the Commission to extend the duration of entitlements contained Schedules X and Y in modern awards (save for that lodged by the Victorian Ambulance Union) were prepared jointly by ourselves and our affiliates. The grounds stated in applications and the draft determinations annexed thereto were expressed to relate to the extension of the duration of existing entitlements to unpaid pandemic leave and paid pandemic leave (where relevant), while allowing the entitlement to take annual leave at half pay to sunset on 29 March 2021.

It is not clear to us whether the *provisional views* concerning Schedule X stated in the decisions of the Commission yesterday in [2021] FWCFB 1601 and [2021] FWCFB 1596 relate to only the unpaid leave entitlement in that Schedule or the entirety of that Schedule. Irrespective of this, it is not our intention to contest the adoption of the *provisional view* in relation to Schedule X.

In relation to Schedule Y, the Commission's *provisional view* is that:

"The emergency circumstance which caused us to award the paid pandemic leave entitlement for aged care employees do not appear to have pertained for some time now. It is therefore our *provisional view* that Schedule Y should not be further extended".

Whilst we disagree with such an outcome on the merits, we note that we and our affiliates conducted a contested claim for the insertion of Schedule Y entitlements in the *Social, Community, Home Care and Disability Services Industry Award* and the *Ambulance and Patient Transport Industry Award* which was the subject of a decision in [2020] FWCFB 7079. In that matter, we sought to persuade the Full Bench that an entitlement to paid pandemic leave could be justified in an accepted high risk setting even where the level of COVID-19 infection in that sector was not at a high level at the time the claim was determined, but had been in the past. We saw enormous value in having such an entitlement in place as a preventative measure, however the claim was rejected. The *provisional view* suggests that the Full Bench will maintain the approach which led to that claim being dismissed. In those circumstances we do not see any utility in contesting the *provisional view* on the information presently available to us. We may, nonetheless, review our position should circumstances change or further material become available after 29 March.

Regards,

Trevor Clarke
Manager, Industrial and Legal

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