



# DETERMINATION

*Fair Work Act 2009*

s.158—Application to vary or revoke a modern award

## **Applications to vary Schedule X**

(AM2021/9 and Ors)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER BISSETT

MELBOURNE, 31 MARCH 2021

*Schedule X—Additional measures during the COVID-19 pandemic – applications to extend the operation of Schedule X – Airport Employees Award 2020 – Architects Award 2020 – Professional Employees Award 2020 – State Government Agencies Award 2020.*

A. Further to the decision issued on transcript by the Full Bench on 31 March 2021, the awards listed in Appendix A are varied as follows:

1. By deleting Schedule X—Additional Measures During the Covid-19 Pandemic and inserting the following:

### **Schedule X—Additional Measures During the Covid-19 Pandemic**

**X.1** Subject to clauses X.2.1(d) and X.2.2(c), Schedule X operates from 31 March 2021 until 31 December 2021. The period of operation can be extended on application.

**X.2** During the operation of Schedule X, the following provisions apply:

#### **X.2.1 Unpaid pandemic leave**

(a) Subject to clauses X.2.1(b), (c) and (d), any employee is entitled to take up to 2 weeks' unpaid leave if the employee is required by government or medical authorities or on the advice of a medical practitioner to self-isolate and is consequently prevented from working, or is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic.

(b) The employee must give their employer notice of the taking of leave under clause X.2.1(a) and of the reason the employee requires the leave, as soon as practicable (which may be a time after the leave has started).

(c) An employee who has given their employer notice of taking leave under clause X.2.1(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 clause X.2.1(a).

- (d) A period of leave under clause X.2.1(a) must start before 31 December 2021, but may end after that date.
- (e) Leave taken under clause X.2.1(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 and the [NES](#).

NOTE: The employer and employee may agree that the employee may take more than 2 weeks' unpaid pandemic leave.

### **X.2.2 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.
- (b) Any agreement to take twice as much annual leave at half pay must be recorded in writing and retained as an employee record.
- (c) A period of leave under clause X.2.2(a) must start before 31 December 2021, but may end after that date.

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 2 weeks' annual leave on half pay. In this example:

- the employee's pay for the 2 weeks' leave is the same as the pay the employee would have been entitled to for one week's leave on full pay (where one week's full pay includes leave loading under the Annual Leave clause of this award); and
- one week of leave is deducted from the employee's annual leave accrual.

NOTE 1: A employee covered by this award who is entitled to the benefit of clause X.2.1 or X.2.2 has a workplace right under section 341(1)(a) of the [Act](#).

NOTE 2: Under section 340(1) of the [Act](#), an employer must not take adverse action against an employee because the employee has a workplace right, has or has not exercised a workplace right, or proposes or does not propose to exercise a workplace right, or to prevent the employee exercising a workplace right. Under section 342(1) of the [Act](#), an employer takes adverse action against an employee if the employer dismisses the employee, injures the employee in his or her employment, alters the position of the employee to the employee's prejudice, or discriminates between the employee and other employees of the employer.

NOTE 3: Under section 343(1) of the [Act](#), a person must not organise or take, or threaten to organise or take, action against another person with intent to coerce the person to exercise or not exercise, or propose to exercise or not exercise, a workplace right, or to exercise or propose to exercise a workplace right in a particular way.

2. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation on 31 March 2021. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect in relation to a particular employee until the start of the employee's first full pay period that starts on or after 31 March 2021.

PRESIDENT

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**Appendix A**

<b>Award title</b>	<b>Award ID</b>
<i>Airport Employees Award 2020</i>	<a href="#"><u>MA000049</u></a>
<i>Architects Award 2020</i>	<a href="#"><u>MA000079</u></a>
<i>Professional Employees Award 2020</i>	<a href="#"><u>MA000065</u></a>
<i>State Government Agencies Award 2020</i>	<a href="#"><u>MA000121</u></a>