



IN THE FAIR WORK COMMISSION

Matter No: AM2014/301

Title: Public Holidays

BRIEF OUTLINE OF SUBMISSIONS

13 February 2015

Filed on behalf of:	Health Services Union		
Filed by:	Leigh Svendsen National Industrial Officer	Mobile:	0418 538 989
Address:	Suite 1, Level 3, 377 Sussex St. Sydney NSW 2000		
	PO Box 20349, World Square NSW 2002		
Phone:	02 8203 6066	Email:	leighs@hsu.net.au

Introduction 2

 Claims 2

 Weekend Public Holidays 3

 Non-working public holiday 3

 Conduct of the matter 4

Introduction

1. The HSU makes the following comments in response to the Commission’s statement and directions¹ of 17 December 2014 which invites parties to file written submissions outlining the scope of their case in the public holidays common matter proceedings, the number of witnesses they are likely to call and the anticipated duration of proceedings. These comments are in addition to the submissions already filed with the Commission on 13 November and 3 December 2014.
2. HSU filed draft determinations on the 3 December 2014 in relation to the following awards:
 - a. Aboriginal Community Controlled Health Services Award²,
 - b. Aged Care Award³,
 - c. Ambulance and Patient Transport Award⁴,
 - d. Health Professional and Support Services Award⁵,
 - e. Nurses Award⁶, and
 - f. Social, Community, Home Care and Disability Services Industry Award⁷.

Claims

3. HSU makes two claims in relation to public holidays within the above awards. These claims can be broadly described as weekend public holidays and non-working days entitlements. The specific details of these claims by award are provided in the Draft Determinations filed with the Commission on 3 December 2014⁸.

¹ [\[2014\] FWC 9207](#)

² [MA000115](#)

³ [MA000018](#)

⁴ [MA000098](#)

⁵ [MA000027](#)

⁶ [MA000034](#)

⁷ [MA000100](#)

⁸ [HSU Submissions](#)

4. HSU submits the proposed variations are consistent with the modern award objectives and seeks to clarify the NES entitlement for all employees to a day of leave without loss on a public holiday with the impact of implementation in a seven-day a week roster.

Weekend Public Holidays

5. The weekend public holidays claim provides for the payment of the public holiday penalty rate to an employee who works the public holiday, where the public holiday falls on a Saturday or a Sunday. However the gazetting of a substitute or prescribed alternate day means the public holiday entitlement is not payable on the day itself.
6. An anomaly arising from the provision of substitute or gazetted alternate public holidays in health, which operates every day of the year, is that the employee who works on the day itself is not paid any penalty when that public holiday has an alternate gazetted day. However that employee does not get the benefit of the public holiday provided by the NES, to absent from work without loss of pay, because they will still work their full number of hours in the week.
7. Only an employee who works the substitute or gazetted day receives the public holiday penalty rate.
8. In furtherance of the commonality of the claims, HSU proposes to vary the wording of our original proposed draft as follows:

Clause X

X.1 Where any public holiday falls on a Saturday or a Sunday and the public holiday is substituted for another day, an employee working on the public holiday shall receive a loading of [150%] of the employee's ordinary rate for the hours worked on the public holiday.

X.2 Where any public holiday falls on a Saturday or a Sunday and the public holiday is substituted for another day, an employee working on the substituted day shall receive a loading of [50%] of the employee's ordinary rate for the hours worked on the substituted day.

Non-working public holiday

9. A public holiday occurring on a rostered day off is currently generally provided for in relation to full-time employees. The HSU proposal seeks to extend the benefit to at least some part-time employees.
10. The intention of the proposed clauses is that part-time employees who more often than not work on the day on which a public holiday falls would receive their ordinary pay for that day even if they are rostered off on the actual day on which the holiday falls.
11. HSU submits that the rationale behind the inclusion of an entitlement to payment on a rostered day off applies equally to part-time employees who frequently work on the day of the week on which the public holiday falls.

Conduct of the matter

12. The weekend public holidays claim essentially seeks to replicate the entitlement in the Nurses Award, which was part of the determined by the Full Bench⁹ in a number of awards in 2013, and flow it across the health sector. HSU believes this matter will be able to be addressed and determined essentially through submission of the parties.
13. Although the second claim pertaining to the payment of public holiday rates to part-time employees whose part-time hours regularly include the day of the week on which the public holiday occurs is likely to be more contentious, it too should also be capable of being addressed and determined essentially through submissions from the parties.
14. At this stage HSU is contemplating some brief witness evidence. It is likely that any witnesses will address both matters and briefly. It is unlikely that we would call more than 3-4 witnesses. As a part of the total proceedings before the Commission, HSU does not believe submissions and evidence in our specific applications will take more than a day. This however depends on the overall conduct of the matters.
15. HSU submits these matters should be managed and heard as common matters. We submit the arguments in support of our claims are the same across the multiple awards identified, with only minor variations in potential examples.
16. Further HSU supports the submissions of the ACTU concerning the general commonality of the claims, noting that our claims fall within the two broad headings identified by the ACTU. Our indications of timing are based on the matters being run jointly.

⁹ [\[2013\] FWCFB 2168](#)