



## DECISION

*Fair Work Act 2009*

s.160— Variation of modern award to remove ambiguity or uncertainty or correct error

### **Section 160— Variation of modern award to remove ambiguity or uncertainty or correct error** (AM2019/21 & AM2019/22)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER HAMPTON

MELBOURNE, 17 DECEMBER 2019

*Part-day public holidays.*

[1] On 27 November 2019 the Queensland parliament passed the *Holidays and Other Legislation Amendment Bill 2019 (QLD)* which declares a part-day public holiday in the state of Queensland from **6pm to midnight** on Christmas Eve (24 December) and will take effect from 2019.<sup>1</sup> The stated policy objective of the new part-day public holiday is as follows:

‘Declaring a public holiday will recognise that the personal, social, religious and cultural significance of Christmas celebrations commence on Christmas Eve and so recognise the importance of that evening to spend time with family and friends and prepare for Christmas Day. Declaring a public holiday from 6pm will also ensure that workers have the right to reasonably refuse to work, or be fairly compensated should they work, after 6pm on Christmas Eve.’<sup>2</sup>

[2] Of the 122 modern awards, 113 currently contain a part-day public holiday schedule (see Appendix A). There are 5 different versions<sup>3</sup> of the part-day public holiday schedule but each of them refer to a part-day public holiday ‘declared or prescribed between **7.00 pm and midnight** on Christmas Eve (24 December in each year) or New Year’s Eve (31 December in each year)’.

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<sup>1</sup> The Act has received royal assent on 5 December 2019.

<sup>2</sup> *Holidays and Other Legislation Amendment Bill 2019* [explanatory note](#)

<sup>3</sup> [PR532628](#), [PR532630](#), [PR532631](#), [PR532632](#) and [PR532633](#). The structure of the schedules is largely similar in each of the 113 awards.

Part-day public holiday schedules were initially considered during the 2012 Transitional Review proceedings (AM2012/355) prompted by the *Statutes Amendment (Shop Trading and Holidays) Act 2012 (SA)* which established two additional part-day public holidays to operate throughout South Australia on Christmas Eve (24 December) and New Year's Eve (31 December), between the hours 7.00 pm and midnight.<sup>4</sup> In those proceedings the Full Bench observed:

‘[11] There are a number of issues that arise through the interaction of the part-day public holidays and the common public holiday provisions found in many modern awards. These include the following:

(i) *Annualised salary arrangements*: Some modern awards contain annualised salary arrangements. These provide that if an employee on an annualised salary works on a public holiday, that employee would be entitled to a full day off in lieu or a day added to their annual leave entitlement. The application of that concept, to part-day public holidays of the kind being considered here, is not beyond doubt.

(ii) *Rostered day off arrangements*: Many modern awards provide a system of rostered days off (RDO). Some provide that if part of an employee's RDO falls on a public holiday they are entitled to 7.6 hours (or a day's) pay, an extra day of annual leave or a substitute day off on an alternative week day. The application of these concepts, to part-day public holidays of the kind being considered here, is problematic.

(iii) *Annual close down arrangements*: Some modern awards contain provisions concerning annual close-downs. They provide in effect that an employee is not considered to be on annual leave if a day falling in that period is a public holiday (which would include a part-day public holiday). This clearly operates in the context of s.89(1) of the Act as part of the NES. How this concept operates in the case of a part-day public holiday that falls outside of the ordinary hours of some employees is uncertain.

(iv) *Time off for work performed on a public holiday*: Some modern awards directly provide a day of time off in lieu of any work performed on a public holiday. The application of these concepts, to part-day public holidays of the kind being considered here, is ambiguous.

(v) *Minimum Engagement provisions*: Most modern awards have minimum engagement provisions in relation to work on public holidays. Depending upon the precise terms of the awards in question and how they are applied, the minimum engagement provisions might relate specifically to work on the public holiday or alternatively, in relation to each (daily) engagement.

[12] We are satisfied that the proclamation of the part-day public holidays has given rise to a number of ambiguities and uncertainties in the provisions of the modern awards we propose to vary.<sup>5</sup>

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<sup>4</sup> [2012] FWAFB 10738 at [10]

<sup>5</sup> [2012] FWAFB 10738 at [11] to [12]

[3] The Full Bench went on to exercise the Commission's power under s. 160 of the Act to insert part-day public holiday schedules into 113 awards.<sup>6</sup>

[4] These schedules were again considered during the 4 yearly review of modern awards in AM2014/301 and were the subject of a number of statements and a conference on 10 August 2018.<sup>7</sup> A decision issued on 7 November 2018<sup>8</sup> varied the 113 affected awards part-day public holiday schedules to their current form.<sup>9</sup>

[5] In response to the part-day public holiday declared in Queensland, the Australian Hotels Association (AHA) has made an application to vary the *Hospitality Industry (General) Award 2010* (Hospitality Award) pursuant to s 158 of the *Fair Work Act 2009* (the Act).

[6] The AHA seeks a determination to vary Schedule H—Part-day Public Holidays, of the Hospitality Award so that it applies to, and provides the same terms and conditions to, part-day public holidays declared or prescribed between 6:00pm and midnight on Christmas Eve or New Years Eve. Their proposed amendment is as follows:

**H.1** Where a part-day public holiday is declared or prescribed between 6.00pm and midnight, or 7.00pm and midnight, on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

(a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.

(b) Where a part-time or full-time employee is usually rostered to work ordinary hours on the declared or prescribed part-day public holiday between 7.00pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.

(c) Where a part-time or full-time employee is usually rostered to work ordinary hours on the declared or prescribed part-day public holiday between 7.00pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave during the hours of the declared or prescribed part-day public holiday between those hours of 7.00pm and midnight that they would have usually been rostered to work, and will be paid their ordinary rate of pay for such hours.

(d) Where a part-time or full-time employee is usually rostered to work ordinary hours on the declared or prescribed part-day public holiday between 7.00pm and midnight, but as a result of having a rostered day off

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<sup>6</sup> [\[2013\] FWCFB 8938](#)

<sup>7</sup> [\[2018\] FWCFB 3516](#), [\[2018\] FWCFB 4131](#) and [\[2018\] FWCFB 5803](#)

<sup>8</sup> [\[2018\] FWCFB 6540](#)

<sup>9</sup> [PR701683](#)

(RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.

(e) Excluding annualised salaried employees to whom clause A.1.1(f) applies, where an employee works any hours **on the declared or prescribed part-day public holiday** ~~between 7.00pm and midnight~~ they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.

(f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked **on the declared or prescribed part-day public holiday** ~~between 7.00pm and midnight~~.

(g) An employee not rostered to work **on the declared or prescribed part-day public holiday** ~~between 7.00pm and midnight~~, other than an employee who has exercised their right in accordance with clause A.1.1(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.

[7] In a Statement<sup>10</sup> issued on 3 December 2019 (the December 2019 Statement) we expressed the *provisional view* that the Hospitality Award should be varied in line with the AHA's proposed amendment at [8] above. We also expressed the *provisional view* that, pursuant to the Commission's power to vary a modern award on its own initiative in s 157(3)(a), the additional 112 awards with a part-day public holiday schedule should be varied in the same terms as submitted by the AHA for the Hospitality Award.

[8] As mentioned earlier, there are 5 different versions of the part-day public holiday schedule. In the December 2019 Statement we expressed the *provisional view* is that the variation of the 113 awards (including the Hospitality Award) in accordance with the marked-up schedules set out in **Appendix B** is necessary to meet the modern awards objective.

[9] The December 2019 Statement invited parties opposing the *provisional views* set out at [8] and [9] above to file submissions. This matter was heard on Monday 16 December 2019.

[10] The following parties filed submissions in response to the December 2019 Statement:

- Ai Group on [11 December 2019](#);
- United workers' Union [12 December 2019](#)

[11] Both submissions support our *provisional views*.

[12] On 11 December 2019, the Commission received [correspondence](#) from the Queensland Minister for Education and Industrial Relations relating to the matter before us.

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<sup>10</sup> [2019] FWCFB 8182

[13] In referring to the existing part-day public holiday schedules the Minister says:

‘Those clause/schedules are considered to not be applicable to entitlements arising from Queensland’s part-day Christmas Eve public holiday which commences from 6:00pm.

In the absence of applicable arrangements in federal modern awards for employees rostered off work on a part-day public holiday as provided for in Queensland legislation, the alternative is to refer to award provisions relating to public holidays generally. Those provisions create an ambiguity (already recognised in Fair Work Australia's 2012 decision) in that they provide an entitlement to an extra day's pay rather than only the rostered hours on the part-day public holiday.

To remove this ambiguity and establish specific provisions governing entitlements on a part-day public holiday as provided for in Queensland, I wish to draw the Fair Work Commission's attention to this matter. The Fair Work Commission may consider it appropriate and effective to vary the clauses/schedules inserted in 2012 to encompass the recent Queensland amendments.

Given the urgency of this matter to the parties in Queensland, I respectfully request that the Fair Work Commission, using the powers vested in it pursuant to section 160 of the FW Act consider, on its own initiative, varying relevant modern awards prior to 24 December 2019 to remove the ambiguities relating to part-day public holidays. I believe this suggestion is consistent with the approach taken by the Fair Work Commission in its decision in 2012 and would provide clarity to both Queensland employers and employees.’

[14] Section 160 of the *Fair Work Act 2009 (Cth)* (the Act) provides that the Commission may act on its own initiative to vary one or more modern awards to remove ambiguity or uncertainty.

[15] In the December 2019 Statement we expressed the *provisional* view that the part-day public holiday schedules in modern awards should be varied pursuant to s.157. During the course of the hearing on 16 December 2019 we raised the issue of proceeding under s.160; no party opposed such a course.

[16] The determinations varying modern awards which we propose to make are made on our own initiative pursuant to s.160(2)(a).

[17] We are satisfied that the proclamation of the part-day public holidays has given rise to a number of ambiguities and uncertainties in the provisions of the modern awards we propose to vary. We will vary the 113 modern awards with part-day public holiday schedules in the manner set out in the December 2019 Statement to remove ambiguity and uncertainty.

[18] An issue arose during the hearing on 16 December 2019 regarding the operative date of the variation determinations.

[19] The general rule is that a determination that varies a modern award comes into operation on the day specified in the determination (s.165(1)) and the specified day must not be earlier than the day on which the determination is made (s.165(2)). Further, s.165(3) provides that the 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 the day the determination comes into operation.

[20] If determinations were made today then the practical effect of the application of the general rule would be that for some employees (such as those on fortnightly or monthly pay periods) the determinations would not operate prior to the 2019 part-day Christmas eve public holiday.

[21] Section 165(2) provides an exception to the general rule, it states:

The specified day must not be earlier than the day on which the determination is made, unless:

- (a) the determination is made under section 160 (which deals with variation to remove ambiguities or correct errors); and
- (b) the FWC is satisfied that there are exceptional circumstances that justify specifying an earlier day.

[22] In the present matter the determinations we propose to make are made under s.160; hence the condition in s.165(2)(a) is met.

[23] As we have mentioned, the practical effect of the general rule would be that for some employees the determinations would not operate prior to the 2019 part-day Christmas eve public holiday. Such an outcome is plainly undesirable. It is of benefit to employers and employees if the clarity provided by the amendments to the award safety net apply to employees generally; rather than operating to exclude some employees because of the timing of their pay period.

[24] The day specified in each of the determinations we make will be 18 November 2019 to ensure that the determinations are operative prior to the 2019 Christmas eve part-day public holiday. In the context of this matter we are satisfied that there are exceptional circumstances within the meaning of s.165(2)(b) that justify specifying an earlier day.

[25] The variation determinations giving effect to our decision will be published shortly.

PRESIDENT

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**Appendix A—Awards with part-day public holidays schedules**

<b>Award title</b>	<b>Award ID</b>	<b>Schedule</b>
<i>Aboriginal Community Controlled Health Services Award 2010</i>	MA000115	Schedule E
<i>Aged Care Award 2010</i>	MA000018	Schedule E
<i>Air Pilots Award 2010</i>	MA000046	Schedule F
<i>Aircraft Cabin Crew Award 2010</i>	MA000047	Schedule E
<i>Airline Operations—Ground Staff Award 2010</i>	MA000048	Schedule F
<i>Airport Employees Award 2010</i>	MA000049	Schedule F
<i>Ambulance and Patient Transport Industry Award 2010</i>	MA000098	Schedule C
<i>Amusement, Events and Recreation Award 2010</i>	MA000080	Schedule F
<i>Animal Care and Veterinary Services Award 2010</i>	MA000118	Schedule E
<i>Aquaculture Industry Award 2010</i>	MA000114	Schedule F
<i>Architects Award 2010</i>	MA000079	Schedule C
<i>Asphalt Industry Award 2010</i>	MA000054	Schedule E
<i>Banking, Finance and Insurance Award 2010</i>	MA000019	Schedule F
<i>Book Industry Award 2010</i>	MA000078	Schedule B
<i>Broadcasting and Recorded Entertainment Award 2010</i>	MA000091	Schedule K
<i>Building and Construction General On-site Award 2010</i>	MA000020	Schedule E
<i>Business Equipment Award 2010</i>	MA000021	Schedule F
<i>Car Parking Award 2010</i>	MA000095	Schedule E
<i>Cement and Lime Award 2010</i>	MA000055	Schedule F
<i>Cemetery Industry Award 2010</i>	MA000070	Schedule F
<i>Children's Services Award 2010</i>	MA000120	Schedule E
<i>Cleaning Services Award 2010</i>	MA000022	Schedule H
<i>Clerks—Private Sector Award 2010</i>	MA000002	Schedule E
<i>Commercial Sales Award 2010</i>	MA000083	Schedule D
<i>Concrete Products Award 2010</i>	MA000056	Schedule E
<i>Contract Call Centre Award 2010</i>	MA000023	Schedule E
<i>Corrections and Detention (Private Sector) Award 2010</i>	MA000110	Schedule F
<i>Dredging Industry Award 2010</i>	MA000085	Schedule B

<b>Award title</b>	<b>Award ID</b>	<b>Schedule</b>
<i>Dry Cleaning and Laundry Industry Award 2010</i>	MA000096	Schedule G
<i>Educational Services (Post-Secondary Education) Award 2010</i>	MA000075	Schedule G
<i>Educational Services (Schools) General Staff Award 2010</i>	MA000076	Schedule F
<i>Educational Services (Teachers) Award 2010</i>	MA000077	Schedule C
<i>Electrical, Electronic and Communications Contracting Award 2010</i>	MA000025	Schedule F
<i>Electrical Power Industry Award 2010</i>	MA000088	Schedule F
<i>Fast Food Industry 2010</i>	MA000003	Schedule E
<i>Fire Fighting Industry Award 2010</i>	MA000111	Schedule C
<i>Fitness Industry Award 2010</i>	MA000094	Schedule E
<i>Food, Beverage and Tobacco Manufacturing Award 2010</i>	MA000073	Schedule F
<i>Funeral Industry Award 2010</i>	MA000105	Schedule F
<i>Gardening and Landscaping Services Award 2010</i>	MA000101	Schedule F
<i>Gas Industry Award 2010</i>	MA000061	Schedule F
<i>General Retail Industry Award 2010</i>	MA000004	Schedule F
<i>Graphic Arts, Printing and Publishing Award 2010</i>	MA000026	Schedule G
<i>Hair and Beauty Industry Award 2010</i>	MA000005	Schedule F
<i>Health Professionals and Support Services Award 2010</i>	MA000027	Schedule F
<i>Higher Education Industry—Academic Staff—Award 2010</i>	MA000006	Schedule B
<i>Higher Education Industry—General Staff—Award 2010</i>	MA000007	Schedule H
<i>Horse and Greyhound Training Award 2010</i>	MA000008	Schedule D
<i>Horticulture Award 2010</i>	MA000028	Schedule E
<i>Hydrocarbons Field Geologists Award 2010</i>	MA000064	Schedule D
<i>Hydrocarbons Industry (Upstream) Award 2010</i>	MA000062	Schedule F
<i>Joinery and Building Trades Award 2010</i>	MA000029	Schedule F
<i>Journalists Published Media Award 2010</i>	MA000067	Schedule C
<i>Labour Market Assistance Industry Award 2010</i>	MA000099	Schedule E
<i>Legal Services Award 2010</i>	MA000116	Schedule E
<i>Live Performance Award 2010</i>	MA000081	Schedule F
<i>Local Government Industry Award 2010</i>	MA000112	Schedule F

<b>Award title</b>	<b>Award ID</b>	<b>Schedule</b>
<i>Mannequins and Models Award 2010</i>	MA000117	Schedule C
<i>Manufacturing and Associated Industries and Occupations Award 2010</i>	MA000010	Schedule F
<i>Marine Tourism and Charter Vessels Award 2010</i>	MA000093	Schedule E
<i>Marine Towage Award 2010</i>	MA000050	Schedule B
<i>Maritime Offshore Oil and Gas Award 2010</i>	MA000086	Schedule C
<i>Market and Social Research Award 2010</i>	MA000030	Schedule E
<i>Meat Industry Award 2010</i>	MA000059	Schedule F
<i>Medical Practitioners Award 2010</i>	MA000031	Schedule B
<i>Mining Industry Award 2010</i>	MA000011	Schedule F
<i>Miscellaneous Award 2010</i>	MA000104	Schedule F
<i>Mobile Crane Hiring Award 2010</i>	MA000032	Schedule E
<i>Nursery Award 2010</i>	MA000033	Schedule E
<i>Nurses Award 2010</i>	MA000034	Schedule C
<i>Oil Refining and Manufacturing Award 2010</i>	MA000072	Schedule F
<i>Passenger Vehicle Transportation Award 2010</i>	MA000063	Schedule E
<i>Pastoral Award 2010</i>	MA000035	Schedule D
<i>Pest Control Industry Award 2010</i>	MA000097	Schedule E
<i>Pharmaceutical Industry Award 2010</i>	MA000069	Schedule E
<i>Pharmacy Industry Award 2010</i>	MA000012	Schedule E
<i>Plumbing and Fire Sprinklers Award 2010</i>	MA000036	Schedule F
<i>Ports, Harbours and Enclosed Water Vessels Award 2010</i>	MA000052	Schedule B
<i>Poultry Processing Award 2010</i>	MA000074	Schedule E
<i>Premixed Concrete Award 2010</i>	MA000057	Schedule E
<i>Professional Diving Industry (Industrial) Award 2010</i>	MA000108	Schedule C
<i>Professional Diving Industry (Recreational) Award 2010</i>	MA000109	Schedule C
<i>Quarrying Award 2010</i>	MA000037	Schedule F
<i>Racing Clubs Events Award 2010</i>	MA000013	Schedule E
<i>Racing Industry Ground Maintenance Award 2010</i>	MA000014	Schedule E
<i>Real Estate Industry Award 2010</i>	MA000106	Schedule F

<b>Award title</b>	<b>Award ID</b>	<b>Schedule</b>
<i>Registered and Licensed Clubs Award 2010</i>	MA000058	Schedule G
<i>Restaurant Industry Award 2010</i>	MA000119	Schedule F
<i>Road Transport and Distribution Award 2010</i>	MA000038	Schedule F
<i>Road Transport (Long Distance Operations) Award 2010</i>	MA000039	Schedule D
<i>Salt Industry Award 2010</i>	MA000107	Schedule F
<i>Seafood Processing Award 2010</i>	MA000068	Schedule E
<i>Seagoing Industry Award 2010</i>	MA000122	Schedule C
<i>Security Services Industry Award 2010</i>	MA000016	Schedule E
<i>Silviculture Award 2010</i>	MA000040	Schedule D
<i>Social, Community, Home Care and Disability Services Industry Award 2010</i>	MA000100	Schedule H
<i>Sporting Organisations Award 2010</i>	MA000082	Schedule E
<i>State Government Agencies Award 2010</i>	MA000121	Schedule E
<i>Stevedoring Industry Award 2010</i>	MA000053	Schedule F
<i>Storage Services and Wholesale Award 2010</i>	MA000084	Schedule E
<i>Supported Employment Services Award 2010</i>	MA000103	Schedule E
<i>Surveying Award 2010</i>	MA000066	Schedule E
<i>Telecommunications Services Award 2010</i>	MA000041	Schedule F
<i>Textile, Clothing, Footwear and Associated Industries Award 2010</i>	MA000017	Schedule H
<i>Timber Industry Award 2010</i>	MA000071	Schedule I
<i>Transport (Cash in Transit) Award 2010</i>	MA000042	Schedule D
<i>Travelling Shows Award 2010</i>	MA000102	Schedule D
<i>Vehicle Manufacturing, Repair, Services and Retail Award 2010</i>	MA000089	Schedule G
<i>Victorian Local Government Award 2015</i>	MA000132	Schedule E
<i>Waste Management Award 2010</i>	MA000043	Schedule E
<i>Water Industry Award 2010</i>	MA000113	Schedule F
<i>Wine Industry Award 2010</i>	MA000090	Schedule F
<i>Wool Storage, Sampling and Testing Award 2010</i>	MA000044	Schedule E

## Appendix B

### Version 1:

‘This schedule operates in conjunction with award provisions dealing with public holidays.

**X.1** Where a part-day public holiday is declared or prescribed between **6pm and midnight, or 7.00 pm and midnight** on Christmas Eve (24 December in each year) or New Year’s Eve (31 December in each year) the following will apply on Christmas Eve and New Year’s Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

(a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.

(b) Where a part-time or full-time employee is usually rostered to work ordinary hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.

(c) Where a part-time or full-time employee is usually rostered to work ordinary hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ but as a result of being on annual leave does not work, they will be taken not to be on annual leave **during the hours of the declared or prescribed part-day public holiday** ~~between those hours of 7.00pm and midnight~~ that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.

(d) Where a part-time or full-time employee is usually rostered to work ordinary hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.

(e) Where an employee works any hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.

(f) An employee not rostered to work **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~, other than an employee who has exercised their right in accordance with clause F.1(a), will not be entitled to another day off, another day’s pay or another day of annual leave as a result of the part-day public holiday.

(g) Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.

**X.2** An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.

This schedule is not intended to detract from or supplement the NES.’

Version 1 is included in the following awards:

<b>Award title</b>	<b>Award ID</b>	<b>Schedule</b>
<i>Airline Operations—Ground Staff Award 2010</i>	<a href="#">MA000048</a>	Schedule F
<i>Building and Construction General On-site Award 2010</i>	<a href="#">MA000020</a>	Schedule E
<i>Electrical, Electronic and Communications Contracting Award 2010</i>	<a href="#">MA000025</a>	Schedule F
<i>Electrical Power Industry Award 2010</i>	<a href="#">MA000088</a>	Schedule F
<i>Food, Beverage and Tobacco Manufacturing Award 2010</i>	<a href="#">MA000073</a>	Schedule F
<i>Graphic Arts, Printing and Publishing Award 2010</i>	<a href="#">MA000026</a>	Schedule G
<i>Joinery and Building Trades Award 2010</i>	<a href="#">MA000029</a>	Schedule F
<i>Mobile Crane Hiring Award 2010</i>	<a href="#">MA000032</a>	Schedule E
<i>Plumbing and Fire Sprinklers Award 2010</i>	<a href="#">MA000036</a>	Schedule F
<i>Surveying Award 2010</i>	<a href="#">MA000066</a>	Schedule E
<i>Textile, Clothing, Footwear and Associated Industries Award 2010</i>	<a href="#">MA000017</a>	Schedule H
<i>Vehicle Manufacturing, Repair, Services and Retail Award 2010</i>	<a href="#">MA000089</a>	Schedule G

*Version 2:*

‘This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the NES.

**X.1** Where a part-day public holiday is declared or prescribed between **6pm and midnight, or 7.00 pm and midnight** on Christmas Eve (24 December in each year) or New Year’s Eve (31 December in each year) the following will apply on Christmas Eve and New Year’s Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

(a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.

(b) Where a part-time or full-time employee is usually rostered to work ordinary hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.

(c) Where a part-time or full-time employee is usually rostered to work ordinary hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ but as a result of being on annual leave does not work, they will be taken not to be on annual leave **during the hours of the declared or prescribed part-day public holiday** ~~between those hours of 7.00 pm and midnight~~ that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.

(d) Where a part-time or full-time employee is usually rostered to work ordinary hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.

(e) Excluding annualised salaried employees to whom clause F.1(f) applies, where an employee works any hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.

(f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~.

(g) An employee not rostered to work **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~, other than an employee who has exercised their right in accordance with clause F.1(a), will not be entitled to another day off, another day’s pay or another day of annual leave as a result of the part-day public holiday.

**X.2** An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.

This schedule is not intended to detract from or supplement the NES.’

Version 2 is included in the following awards:

<b>Award title</b>	<b>Award ID</b>	<b>Schedule</b>
<i>Aboriginal Community Controlled Health Services Award 2010</i>	<a href="#">MA000115</a>	Schedule E
<i>Aged Care Award 2010</i>	<a href="#">MA000018</a>	Schedule E
<i>Air Pilots Award 2010</i>	<a href="#">MA000046</a>	Schedule F
<i>Aircraft Cabin Crew Award 2010</i>	<a href="#">MA000047</a>	Schedule E
<i>Ambulance and Patient Transport Industry Award 2010</i>	<a href="#">MA000098</a>	Schedule C
<i>Amusement, Events and Recreation Award 2010</i>	<a href="#">MA000080</a>	Schedule F
<i>Animal Care and Veterinary Services Award 2010</i>	<a href="#">MA000118</a>	Schedule E
<i>Architects Award 2010</i>	<a href="#">MA000079</a>	Schedule C
<i>Banking, Finance and Insurance Award 2010</i>	<a href="#">MA000019</a>	Schedule F
<i>Book Industry Award 2010</i>	<a href="#">MA000078</a>	Schedule B
<i>Broadcasting and Recorded Entertainment Award 2010</i>	<a href="#">MA000091</a>	Schedule K
<i>Business Equipment Award 2010</i>	<a href="#">MA000021</a>	Schedule F
<i>Car Parking Award 2010</i>	<a href="#">MA000095</a>	Schedule E
<i>Cemetery Industry Award 2010</i>	<a href="#">MA000070</a>	Schedule F
<i>Children’s Services Award 2010</i>	<a href="#">MA000120</a>	Schedule E
<i>Cleaning Services Award 2010</i>	<a href="#">MA000022</a>	Schedule H
<i>Clerks—Private Sector Award 2010</i>	<a href="#">MA000002</a>	Schedule E
<i>Commercial Sales Award 2010</i>	<a href="#">MA000083</a>	Schedule D
<i>Contract Call Centre Award 2010</i>	<a href="#">MA000023</a>	Schedule E
<i>Corrections and Detention (Private Sector) Award 2010</i>	<a href="#">MA000110</a>	Schedule E
<i>Dry Cleaning and Laundry Industry Award 2010</i>	<a href="#">MA000096</a>	Schedule G
<i>Educational Services (Post-Secondary Education) Award 2010</i>	<a href="#">MA000075</a>	Schedule G
<i>Educational Services (Schools) General Staff Award 2010</i>	<a href="#">MA000076</a>	Schedule F
<i>Educational Services (Teachers) Award 2010</i>	<a href="#">MA000077</a>	Schedule C
<i>Fire Fighting Industry Award 2010</i>	<a href="#">MA000111</a>	Schedule C

<b>Award title</b>	<b>Award ID</b>	<b>Schedule</b>
<i>Fitness Industry Award 2010</i>	<a href="#">MA000094</a>	Schedule E
<i>Funeral Industry Award 2010</i>	<a href="#">MA000105</a>	Schedule F
<i>Gardening and Landscaping Services Award 2010</i>	<a href="#">MA000101</a>	Schedule F
<i>General Retail Industry Award 2010</i>	<a href="#">MA000004</a>	Schedule F
<i>Hair and Beauty Industry Award 2010</i>	<a href="#">MA000005</a>	Schedule F
<i>Health Professionals and Support Services Award 2010</i>	<a href="#">MA000027</a>	Schedule F
<i>Higher Education Industry—Academic Staff—Award 2010</i>	<a href="#">MA000006</a>	Schedule B
<i>Higher Education Industry—General Staff—Award 2010</i>	<a href="#">MA000007</a>	Schedule H
<i>Horse and Greyhound Training Award 2010</i>	<a href="#">MA000008</a>	Schedule D
<i>Horticulture Award 2010</i>	<a href="#">MA000028</a>	Schedule E
<i>Hospitality Industry (General) Award 2010</i>	<a href="#">MA000009</a>	Schedule H
<i>Journalists Published Media Award 2010</i>	<a href="#">MA000067</a>	Schedule C
<i>Labour Market Assistance Industry Award 2010</i>	<a href="#">MA000099</a>	Schedule E
<i>Legal Services Award 2010</i>	<a href="#">MA000116</a>	Schedule E
<i>Live Performance Award 2010</i>	<a href="#">MA000081</a>	Schedule F
<i>Local Government Industry Award 2010</i>	<a href="#">MA000112</a>	Schedule F
<i>Mannequins and Models Award 2010</i>	<a href="#">MA000117</a>	Schedule C
<i>Market and Social Research Award 2010</i>	<a href="#">MA000030</a>	Schedule E
<i>Meat Industry Award 2010</i>	<a href="#">MA000059</a>	Schedule F
<i>Medical Practitioners Award 2010</i>	<a href="#">MA000031</a>	Schedule B
<i>Mining Industry Award 2010</i>	<a href="#">MA000011</a>	Schedule F
<i>Miscellaneous Award 2010</i>	<a href="#">MA000104</a>	Schedule F
<i>Nursery Award 2010</i>	<a href="#">MA000033</a>	Schedule E
<i>Nurses Award 2010</i>	<a href="#">MA000034</a>	Schedule C
<i>Passenger Vehicle Transportation Award 2010</i>	<a href="#">MA000063</a>	Schedule E
<i>Pastoral Award 2010</i>	<a href="#">MA000035</a>	Schedule D
<i>Pest Control Industry Award 2010</i>	<a href="#">MA000097</a>	Schedule E
<i>Pharmacy Industry Award 2010</i>	<a href="#">MA000012</a>	Schedule E
<i>Racing Clubs Events Award 2010</i>	<a href="#">MA000013</a>	Schedule E
<i>Racing Industry Ground Maintenance Award 2010</i>	<a href="#">MA000014</a>	Schedule E

<b>Award title</b>	<b>Award ID</b>	<b>Schedule</b>
<i>Real Estate Industry Award 2010</i>	<a href="#">MA000106</a>	Schedule F
<i>Registered and Licensed Clubs Award 2010</i>	<a href="#">MA000058</a>	Schedule G
<i>Restaurant Industry Award 2010</i>	<a href="#">MA000119</a>	Schedule F
<i>Road Transport (Long Distance Operations) Award 2010</i>	<a href="#">MA000039</a>	Schedule D
<i>Road Transport and Distribution Award 2010</i>	<a href="#">MA000038</a>	Schedule F
<i>Salt Industry Award 2010</i>	<a href="#">MA000107</a>	Schedule F
<i>Security Services Industry Award 2010</i>	<a href="#">MA000016</a>	Schedule E
<i>Silviculture Award 2010</i>	<a href="#">MA000040</a>	Schedule D
<i>Social, Community, Home Care and Disability Services Industry Award 2010</i>	<a href="#">MA000100</a>	Schedule H
<i>Sporting Organisations Award 2010</i>	<a href="#">MA000082</a>	Schedule E
<i>State Government Agencies Administration Award 2010</i>	<a href="#">MA000121</a>	Schedule E
<i>Storage Services and Wholesale Award 2010</i>	<a href="#">MA000084</a>	Schedule E
<i>Supported Employment Services Award 2010</i>	<a href="#">MA000103</a>	Schedule E
<i>Telecommunications Services Award 2010</i>	<a href="#">MA000041</a>	Schedule F
<i>Transport (Cash in Transit) Award 2010</i>	<a href="#">MA000042</a>	Schedule D
<i>Travelling Shows Award 2010</i>	<a href="#">MA000102</a>	Schedule D
<i>Waste Management Award 2010</i>	<a href="#">MA000043</a>	Schedule E
<i>Wine Industry Award 2010</i>	<a href="#">MA000090</a>	Schedule F
<i>Wool Storage, Sampling and Testing Award 2010</i>	<a href="#">MA000044</a>	Schedule E

Version 3:

‘This schedule operates in conjunction with award provisions dealing with public holidays.

**X.1** Where a part-day public holiday is declared or prescribed between **6pm and midnight, or 7.00 pm and midnight** on Christmas Eve (24 December in each year) or New Year’s Eve (31 December in each year) the following will apply on Christmas Eve and New Year’s Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

(a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.

(b) Where a part-time or full-time employee is usually rostered to work ordinary hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.

(c) Where a part-time or full-time employee is usually rostered to work ordinary hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ but as a result of being on annual leave does not work, they will be taken not to be on annual leave **during the hours of the declared or prescribed part-day public holiday** ~~between those hours of 7.00 pm and midnight~~ that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.

(d) Where a part-time or full-time employee is usually rostered to work ordinary hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.

(e) Excluding annualised salaried employees to whom clause F.1(f) applies, where an employee works any hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.

(f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~.

(g) An employee not rostered to work **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~, other than an employee who has exercised their right in accordance with clause F.1(a), will not be entitled to another day off, another day’s pay or another day of annual leave as a result of the part-day public holiday.

(h) Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.

**X.2** An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.

This schedule is not intended to detract from or supplement the NES.’

Version 3 is included in the following awards:

<b>Award title</b>	<b>Award ID</b>	<b>Schedule</b>
<i>Airport Employees Award 2010</i>	<a href="#">MA000049</a>	Schedule F
<i>Aquaculture Industry Award 2010</i>	<a href="#">MA000114</a>	Schedule F
<i>Asphalt Industry Award 2010</i>	<a href="#">MA000054</a>	Schedule E
<i>Cement and Lime Award 2010</i>	<a href="#">MA000055</a>	Schedule F
<i>Concrete Products Award 2010</i>	<a href="#">MA000056</a>	Schedule E
<i>Dredging Industry Award 2010</i>	<a href="#">MA000085</a>	Schedule B
<i>Gas Industry Award 2010</i>	<a href="#">MA000061</a>	Schedule F
<i>Hydrocarbons Field Geologists Award 2010</i>	<a href="#">MA000064</a>	Schedule D
<i>Hydrocarbons Industry (Upstream) Award 2010</i>	<a href="#">MA000062</a>	Schedule F
<i>Manufacturing and Associated Industries and Occupations Award 2010</i>	<a href="#">MA000010</a>	Schedule F
<i>Marine Tourism and Charter Vessels Award 2010</i>	<a href="#">MA000093</a>	Schedule E
<i>Marine Towing Award 2010</i>	<a href="#">MA000050</a>	Schedule B
<i>Maritime Offshore Oil and Gas Award 2010</i>	<a href="#">MA000086</a>	Schedule C
<i>Oil Refining and Manufacturing Award 2010</i>	<a href="#">MA000072</a>	Schedule F
<i>Pharmaceutical Industry Award 2010</i>	<a href="#">MA000069</a>	Schedule E
<i>Ports, Harbours and Enclosed Water Vessels Award 2010</i>	<a href="#">MA000052</a>	Schedule B
<i>Poultry Processing Award 2010</i>	<a href="#">MA000074</a>	Schedule E
<i>Premixed Concrete Award 2010</i>	<a href="#">MA000057</a>	Schedule E
<i>Professional Diving Industry (Industrial) Award 2010</i>	<a href="#">MA000108</a>	Schedule C
<i>Professional Diving Industry (Recreational) Award 2010</i>	<a href="#">MA000109</a>	Schedule C
<i>Quarrying Award 2010</i>	<a href="#">MA000037</a>	Schedule F
<i>Seafood Processing Award 2010</i>	<a href="#">MA000068</a>	Schedule E
<i>Seagoing Industry Award 2010</i>	<a href="#">MA000122</a>	Schedule C

<b>Award title</b>	<b>Award ID</b>	<b>Schedule</b>
<i>Stevedoring Industry Award 2010</i>	<a href="#">MA000053</a>	Schedule F
<i>Water Industry Award 2010</i>	<a href="#">MA000113</a>	Schedule F

*Version 4:*

‘This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the NES.

**X.1** Where a part-day public holiday is declared or prescribed between **6pm and midnight, or 7.00 pm and midnight** on Christmas Eve (24 December in each year) or New Year’s Eve (31 December in each year) the following will apply on Christmas Eve and New Year’s Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

(a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.

(b) Where a part-time or full-time employee is usually rostered to work ordinary hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.

(c) Where a part-time or full-time employee is usually rostered to work ordinary hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ but as a result of being on annual leave does not work, they will be taken not to be on annual leave **during the hours of the declared or prescribed part-day public holiday** ~~between those hours of 7.00 pm and midnight~~ that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.

(d) Where a part-time or full-time employee is usually rostered to work ordinary hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.

(e) Excluding annualised salaried employees to whom clause E.1(f) applies, where an employee works any hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.

(f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~.

**X.2** An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.’

Version 4 is included in the following award:

<b>Award title</b>	<b>Award ID</b>	<b>Schedule</b>
<i>Fast Food Industry 2010</i>	<a href="#">MA000003</a>	Schedule E

Version 5:

‘This schedule operates in conjunction with award provisions dealing with public holidays.

**X.1** Where a part-day public holiday is declared or prescribed between **6pm and midnight, or 7.00 pm and midnight** on Christmas Eve (24 December in each year) or New Year’s Eve (31 December in each year) the following will apply on Christmas Eve and New Year’s Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

(a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.

(b) Where a part-time or full-time employee is usually rostered to work ordinary hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.

(c) Where a part-time or full-time employee is usually rostered to work ordinary hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ but as a result of being on annual leave does not work, they will be taken not to be on annual leave **during the hours of the declared or prescribed part-day public holiday** ~~between those hours of 7.00 pm and midnight~~ that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.

(d) Where a part-time or full-time employee is usually rostered to work ordinary hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.

(e) Where an employee works any hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.

(f) An employee whose ordinary pattern of work involves rostered shifts which include the hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ but who is not rostered to work **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ on 24 December 2017 or 31 December 2017, and who is entitled to the benefit of clause 36.3 or 36.4 of this award, shall be entitled to the benefit of those clauses on a pro-rata basis, by reference to the number of ordinary hours falling **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~. An employee whose ordinary pattern of work DOES NOT include rostered shifts which include the hours **on the declared or prescribed part-day public holiday** ~~between 7.00 pm and midnight~~ shall not be entitled to the benefit of clauses 36.3 and 36.4 of this award.

**X.2** An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.’

Version 5 is included in the following award:

<b>Award title</b>	<b>Award ID</b>	<b>Schedule</b>
<i>Timber Industry Award 2010</i>	<a href="#">MA000071</a>	Schedule I