



STATEMENT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

Public Holidays

(AM2014/301)

COMMISSIONER HAMPTON

ADELAIDE, 21 JUNE 2018

4 yearly review of modern awards – common issue – public holidays – Nurses Award 2010 and other awards – Christmas day arrangements.

[1] This Statement concerns the issue of whether the Christmas Day arrangements in the *Nurses Award 2010* (Nurses Award) should be reflected into other modern awards operating in those sectors of industry where that award currently applies.

[2] The Full Bench previously issued a Decision¹ on 2 March 2018 which sets out much of the background of this matter.

[3] In the above decision, the Full Bench determined that a general provision dealing with substitute Public Holidays associated with Christmas Day was not appropriate or necessary in the modern awards concerned in order for the instruments to meet the modern awards objective.²

[4] However, in the case of the Nurses Award, the Full Bench acknowledged that there is already a provision within that award which deals with the issue and stated as follows:

“[140] In the case of the HSU claim in relation to Christmas Day, we acknowledge that the Nurses Award, which applies to a significant group of employees in these sectors, already contains a provision dealing with the issue, albeit operating on a different basis. There may be some merit in having some consistency of terms in those sectors where the Nurses Award presently operates given our views about the matter. To that end, Commissioner Hampton will conduct a conference with the relevant parties to further explore this issue. We will finally consider this aspect in light of any report arising from that conference.”

[5] Without detracting from the entirety of the public holiday clause in the Nurses Award, the following extract illustrates the arrangement being considered by the Full Bench:

“32.1 Payment for work done on public holidays

- (a) All work done by an employee during their ordinary shifts on a public holiday, including a substituted day, will be paid at double time of their ordinary rate of pay.
- (b) Businesses that operate seven days a week shall recognise work performed on 25 December which falls on a Saturday or Sunday and, where because of substitution, is not a public holiday within the meaning of the NES with the Saturday or Sunday payment (as appropriate) plus an additional loading of 50% of the employee’s ordinary time rate for the hours worked on that day. All work performed on the substitute day by an employee will receive an additional loading of 50% of the ordinary time rate for the hours worked on that day instead of the rate referred to in clause 32.1.”³

[6] In light of that provision, the Full Bench left open the possibility that some modern awards operating in the health and related sectors, where the Nurses Award presently applies, may be varied in relation to Christmas Day arrangements and that this matter would be further considered in conjunction with the views of relevant parties.

[7] As a result, the Commission is considering whether to convene a conference of all interested organisations with a view to exploring whether a variation to one or more of the modern awards related to the Nurses Award would be appropriate.

[8] The following awards have been identified as being potentially relevant for present purposes:

- *Aboriginal Community Controlled Health Services Award 2010*
- *Aged Care Award 2010*
- *Ambulance and Patient Transport Industry Award 2010*
- *Medical Practitioners Award 2010*
- *Health Professionals and Support Services Award 2010*
- *Nurses Award 2010*
- *Social, Community, Home Care and Disability Services Industry Award 2010*

Please note: This list is not exhaustive and there may be awards which are not relevant, as well as awards which have not been identified.

[9] Before convening the conference foreshadowed in the Full Bench decision, I invite submissions from interested parties in relation to the above matters. Parties should advise the Commission whether the concept raised by the Full Bench has their support and comment on the list of potential awards.

[10] Any interested party wishing to file a submission in relation to this matter is requested to do so by **5.00pm Friday 13 July 2018**. Submissions received will be posted to the Commission's website.

[11] All submissions are to be sent to amod@fwc.gov.au

The image shows a handwritten signature in black ink on the left, which appears to be 'P. H.'. To the right of the signature is the official seal of the Fair Work Commission of Australia. The seal is circular with the text 'THE SEAL OF THE FAIR WORK COMMISSION' around the top and 'AUSTRALIA' at the bottom. In the center of the seal is the Australian coat of arms, featuring a kangaroo and an emu flanking a shield with a seven-pointed star above it.

COMMISSIONER

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¹ [2018] FWCFB 4.

² Ibid at [138] and [139].

³ Extract from clause 32 Public Holidays of the Nurses Award 2010.