



STATEMENT

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 yearly review of modern awards–Public holidays

(AM2014/301 and AM2019/17)

COMMISSIONER HAMPTON

ADELAIDE, 25 SEPTEMBER 2020

Part-day public holidays.

[1] This Statement deals with the proposed conference in relation to the part-day public holiday schedules that are contained in most modern awards.

[2] Of the 121 modern awards, 112¹ currently contain a part-day public holiday schedule. There are 5 different versions of the part-day public holiday schedule.² These schedules were varied during the course of the 4 yearly review to make them ongoing.³

[3] In a decision issued on 7 November 2018, the Public Holidays Full Bench decided that it was ‘not presently necessary’ to make provision for the further review of the part-day public holiday schedules in modern awards. In doing so, the Full Bench earlier noted that ‘if there is to be any award by award consideration of whether the Schedules are required in their present form, this will take some time and will require that all of the other terms of the modern awards that bear upon this issue have been finalised. This finalisation will not take place until the (other) terms of the modern awards are resolved as part of the 4 yearly review.’

[4] On 20 December 2019,⁴ the President issued a statement transferring the further review of the part-day public holidays schedules from the Public Holidays Full Bench (AM2014/301) to the Finalisation of Exposure Drafts Full Bench (AM2019/17). It is apparent from this development that, amongst other relevant matters, the Commission might have regard to any changes that are desirable as part of the move to adopt plain language in modern awards.

[5] The December 2019 statement indicated that a conference would be convened before this arm of the Commission during 2020. This conference has been delayed, in part, because a

¹ The *Quarrying Award 2010* was revoked with effect from 4 February 2020

² PR532628, PR532630, PR532631, PR532632 and PR532633. The structure of the schedules is largely similar in each of the 112 awards.

³ [\[2018\] FWC 6540](#)

⁴ [\[2019\] FWC 8581](#)

number of relevant modern awards have been subject to further review in relation to provisions that might impact upon this issue.

[6] The conference will be conducted by the Commission on **Wednesday 21 October 2020 at 10.00am (ACDT)** via MS Teams. A Notice of Listing is being issued in conjunction with this Statement.

[7] As foreshadowed in a Statement issued by the Commission on 3 March 2020,⁵ each of the part-day public holidays schedules have been re-drafted in plain language and are now being published for consideration.

[8] There are currently 5 versions of the Part-day Public Holiday Schedule. Published with this Statement are the 5 versions re-drafted in plain language placed alongside of the current version for comparative purposes. Each schedule lists the Awards to which that schedule is attached.

[9] To facilitate the Commission's consideration of this matter, the following **related** questions appear to arise.

Substantive/structural issues

1. Should the schedules cover all part-day public holidays or only those falling on Christmas and New Year's Eve?
2. Versions 2 and 3 as now drafted are the same and version 2 could be included in all of the relevant modern awards that contain an annualised wage arrangement provision or otherwise provide for an annualised wage. Is it necessary to have a different version of the schedule depending upon whether the modern award expressly provides for an annualised wage or could the same version be applied to all modern awards?
3. Version 4 applies to the Fast Food Industry Award 2010 only and includes an annualised wage arrangements clause but the award does not contain an annualised wage arrangement provision or otherwise provide for an annualised wage. Also, this award does not include the clause other versions (A.2.7 in versions 2 and 3) relating to employees not rostered to work at the time of the part-day public holiday. Is it still necessary to include the annualised wage clause and not to include the clause relating to employees not rostered to work?
4. Version 5 applies to the Timber Industry Award 2010 only and includes discrete provisions applying to employees whose ordinary pattern of work involves rostered shifts which include the part-day public holiday hours. It does not include the clause other versions (A.2.7 in versions 2 and 3) relating to employees not rostered to work at the time of the part-day public holiday. Is it appropriate to include the clause relating to employees not rostered to work in this award?

⁵ [2020] FWC 1138.

5. In light of questions 3 and 4 above, is it still necessary to retain particular versions of the schedule for the Fast Food Industry Award 2010 (version 4) and the Timber Industry Award 2010 (version 5) when finalised?

6. Alternatively, could one schedule contain all provisions, aside from the discrete Version 5 provisions, and replace versions 1 to 4?

Drafting issues

1. Is the additional reference to personal/carers leave in clauses A.2.4 and A.2.6 (A.2.7 in versions 2 and 3), and therefore the reference to sections 98 and 99 of the Act in the Note at the beginning of the Schedule, appropriate?

2. Is it appropriate to add “accrued day off” to clause A.2.5, as this concept is used in a number of modern awards?

[10] Interested parties are requested to provide a written outline of their positions in relation to these and any other related issues in advance of the conference. These are to be supplied to AMOD@fwc.gov.au by **16 October 2020** and will be made available on the Commission’s website.



COMMISSIONER

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