



REPORT TO THE FINALISATION OF EXPOSURE DRAFTS FULL BENCH

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, 13 NOVEMBER 2020

Report to the Full Bench – 4 yearly review of modern awards – common issue – public holidays – part-day public holidays.

1. What this report is about

[1] This report concerns the provisions that are currently found in most modern awards dealing with certain part-day public holidays. 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

[2] 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. The 20 December 2019 Statement also envisaged that a conference of interested parties would be conducted to consider plain language versions of the various schedules.

[3] I convened a Conference on 21 October 2020 and this Report is being issued having regard to the positions advanced at that Conference and by interested parties more generally.

¹ The *Quarrying Award 2010* was revoked with effect from 4 February 2020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 [\[2018\] FWCFB 6540](#)

⁴ [\[2019\] FWC 8581](#)

2. The process leading to the conference of the parties

[4] On 25 September 2020, in the lead up to the Conference, the Commission issued a Statement⁵ (September 2020 Statement) along with the current 5 versions of the part-day public holiday schedules having been re-drafted in plain language format. The September 2020 Statement set out the history of the matter and posed a series of questions regarding both substantive and structural issues in the current schedules and the redrafted versions.

[5] Interested parties were invited to provide an outline of their positions in advance of the conference and the full versions of these submissions are available on the Commission's website on the [AM2014/301 – Public Holidays](#) page.

[6] A [transcript](#) of the conference is available on the Commission's website.

3. The issues

[7] A number of issues were set out in the September 2020 Statement as follows:

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* (Fast Food Award) 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* (Timber Industry Award) 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 5110](#).

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?

[8] Having regard to the positions of the parties (summarised below) and some aspects that arose during the course of the Conference, the following broad grouping of issues provides a convenient framework to consider this matter:

A: The scope of the part-day public holiday schedules including whether:

- **the schedules should cover all part-day public holidays not just the presently nominated class of (Christmas/ New year) public holidays; and**
- **the scope as defined in the redrafted versions would cover days that are not public holidays within the meaning of s.115(1) of the Act and is so, whether this is appropriate.**

[9] There are various part-day public holidays operating in Australia. The present schedules apply only to part-day public holidays declared or prescribed between 6.00 pm 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). Public holidays of this nature presently occur in South Australia, Northern Territory, and most recently, in Queensland.

[10] The same issues that are sought to be dealt with in the present schedules arising from the Christmas Eve and New Year’s Eve part-day public holidays appear to arise in respect of any part-day public holiday.

[11] The redrafted provision sought to define the scope of the schedule in the following terms:

“Schedule A applies on a part-day declared or prescribed by a law of a State or Territory or a region of the State or Territory to be a public holiday (the **part-day public holiday**).”

[12] Section 115(1) of the Act relevantly provides as follows:

“**115** **Meaning of public holiday**

The public holidays

- (1) The following are **public holidays**:
- (a) each of these days:
- (i) 1 January (New Year’s Day);
 - (ii) 26 January (Australia Day);
 - (iii) Good Friday;
 - (iv) Easter Monday;
 - (v) 25 April (Anzac Day);
 - (vi) the Queen’s birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
 - (vii) 25 December (Christmas Day);
 - (viii) 26 December (Boxing Day);
- (b) any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday.”

[13] The public holiday provisions in most, if not all, of the modern awards utilise the definition of “public holiday” set out in s.115(1) of the Act by making direct reference to the NES. The inclusion of a **law** of “**a region** of the State or Territory” in the redrafted clause potentially extends the scope beyond those public holidays declared or prescribed by a law of the State or Territory.

[14] The Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) sought that the concept of the part-day public holiday also expressly include the notion of a “half-day” public holiday on the basis that this was a form of (part-day) public holiday recognised in the *Public Holidays Act 2010* (NSW).⁶

B: The degree of adoption of common (model) provisions across the modern awards including the following options:

- **Using the same model provisions in each modern award;**
- **Rationalising the versions used in the modern awards; and/or**

⁶ The term “half-day” does not appear to be used in the NSW Act itself but is adopted in Orders that are issued from time to time in relation to that legislation.

- **Retaining or creating specific schedules for various modern awards including the fast Food Award and Timber Industry Award.**

[15] There are 5 different versions of the part-day public holiday schedule applying to the categories of modern awards nominated in each schedule.⁷ The structure of the schedules is largely similar in each of the 112 awards. The Fast Food Award and Timber Industry Award have their own schedules which are largely modelled on the other versions but with some specific provisions.

[16] Amongst the differences contemplated when the schedules were developed was whether the modern awards concerned contained annualised hours arrangements. There have been various changes made to the modern awards during the most recent review and this has included provisions of that nature.

C: Other drafting issues

[17] For ease of reference I have included the current and redrafted (plain language) versions of the schedules as Attachment A.

- 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?
- Is it appropriate to add “accrued day off” to clause A.2.5, as this concept is used in a number of modern awards?
- Should the schedules include reference to annualised hours provisions where such a provision is not contained with the relevant award?
- Public Holiday Penalties - Should clause A.2.3 should be amended to account for the possibility that an award (eg. *Air Pilots Award 2020* or *Broadcasting, Recorded Entertainment and Cinemas Award 2010*) which contain the schedule, does not provide for a public holiday penalty rate?⁸
- Should the current part-day public holiday schedules be amended to avoid employees receiving entitlements which compensate them for hours which would not have been worked on the part-day public holiday. Clause 40.5(a) of the *Manufacturing and Associated Industries and Occupations Award 2020* is cited as an example of where this issue is addressed within the public holiday provisions contained within the body of the award?⁹
- Do the schedules as drafted properly cater for the specific employment arrangements for some awards. For example, version 1 which is to apply to the *Building and*

⁷ PR532628, PR532630, PR532631, PR532632 and PR532633.

⁸ Raised by Ai Group.

⁹ Raised by Ai Group.

Construction General On-site Award 2010 makes no mention of “daily hire” which is a major form of employment under that award?¹⁰

- Should the schedules for part-day public holiday provision be amended to ensure greater consistency between a public holiday and a part-day public holiday provisions where any employee is not rostered or elects not to or does not work the public holiday hours?¹¹
- Should the term ‘ordinary rate of pay’ be replaced with the term ‘minimum hourly rate’¹² or ‘the rate applicable under the NES’¹³ so as to indicate the remuneration to be paid where an employee is not required to work their ordinary hours on such a part day public holiday and achieve consistency with full day public holidays under s116 of the Act?
- Should the schedules deal with the issue of minimum engagement provisions as they apply to part-day public holidays?¹⁴

4. The positions advanced by the parties

[18] I do not intend to repeat the detail of the various submissions for present purposes. The following summarises the substance of those positions using the framework outlined above.

A: The scope of the part-day public holiday schedules

[19] Most parties supported the scope of the schedules applying to all part-day public holidays, provided they fell within the definition of public holiday under the NES.

[20] Whilst some parties supported an extension of the scope to part-day public holidays that may be established by local government bodies, most parties opposed the schedules applying beyond the scope of the NES.

B: The degree of adoption of common (model) provisions across the modern awards

[21] All parties making submission sought that there be some retention of different schedules for different groupings of modern awards.

[22] Some parties sought additional customisation in certain nominated modern awards.

C: Other drafting issues

[23] Most submissions supported 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.

¹⁰ Raised by CFMMEU.

¹¹ Raised by PGA.

¹² Raised by PGA.

¹³ Raised by Ai Group during the conference.

¹⁴ Raised by CFMMEU.

[24] There were divided views about whether it is appropriate to add “accrued day off” to clause A.2.5. For some awards, the term is used and would appear to be consistent with the intention of the clause. However, other awards do not use the term and some parties suggested that its inclusion would create uncertainty and unintended consequences that would require further specific drafting.

[25] Most parties submitted that the schedules should not include reference to annualised hours provisions where such a provision is not contained with the relevant award.

[26] The basis upon which each of the drafting suggestions were advanced is set out in the full submissions of the parties. Some of these garnered some support; however, the parties did not have any significant time prior to the conference to consider the detail of the proposals.

[27] Some parties have made specific drafting suggestions as part of their written submissions, and these are attached to this Statement as Attachment B.

5. Observations to assist the consideration of this matter

A: The scope of the part-day public holiday schedules

[28] There would appear to be some force in the suggestion that the schedules should apply to all part-day public holidays. The same issue regarding how the general public holiday provisions in the awards should be applied to a part-day appear to arise irrespective of whether that part-day occurs at or near to the end of a traditional period of day work, or a morning or afternoon half-day public holiday. This approach has the support of most parties who have made submission on this point.

[29] The redrafted scope provision appears to extend the scope of part-day public holidays beyond the scope of the NES. That is, as the redraft presently reads, the reference to the “region” refers to the laws rather than where the public holiday is to be observed as applies under s.115(1)(b). It is not the intention to change the substantive operation of the provision through the plain language redraft and it would be problematic for the schedules, which are to be read in conjunction with the public holiday provisions contained in the body of the relevant awards, to have a broader scope.

[30] The Full Bench might consider options along the following lines:

Schedule A applies on a part-day declared or prescribed by a law of a State or Territory or a region of the State or Territory to be a public holiday (the part-day public holiday) any part-day which is a part-day public holiday for the purposes of the NES.

OR

Schedule A applies on a part-day declared or prescribed by a law of a State or Territory to be a public holiday (the part-day public holiday).

[31] The inclusion of specific reference to a half-day public holiday would not appear to have any particular consequences and would reflect a term used in one of the State jurisdictions;

however, it may be considered to be unnecessary given that such days are part-days and the Act itself refers only to part-day holidays in s.115.

B: The degree of adoption of common (model) provisions across the modern awards

[32] Although there is merit in having common provisions across the modern awards, this may need to be balanced with the desirability of avoiding terms and concepts that are not otherwise found in the awards and ensuring that any particular aspects of the modern awards that impact on the part-day public holiday provision are taken into account.

[33] As a result, the rationalisation of the schedules as suggested by some of the parties, with the retention of some specific schedules appears to have merit. Namely:

- Using version 1 of the schedule for the relevant modern awards that do not contain annualised wage arrangements provisions.
- Using version 2 of the schedule for the relevant modern awards that do contain annualised wage arrangements provisions. – generally, those currently utilising versions 2 and 3 provided they have the relevant provision.
- Retaining different versions for the Fast Food Award and Timber Award but with some drafting variations

C: Other drafting issues

[34] There is general support for 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.

[35] Care should be taken in using the additional phrase “accrued day off” to clause A.2.5, in the models that apply to a number of modern awards. Whilst used in some modern awards its application in a broadly adopted schedule may have unintended consequences and add complexity. If the relationship between part-day public holidays and the accrual and taking of Rostered Days Off is to be expressly dealt with in the schedules, this may require some award by award consideration.¹⁵

[36] The common view is that it is generally undesirable to include reference to annualised hours provisions in a schedule where such a provision is not contained with the relevant award.

[37] In respect of minimum engagement provisions, this issue was flagged in one of the early reports to the Full Bench¹⁶ leading to the establishment of the (then) interim schedules in 2012. Ultimately, the issue was not dealt with in the schedules. A Full Bench of the Commission

¹⁵ The *Local Government Award 2010* provides such an example. See the LGA proposal and the transcript of the Conference at PN100. See also the CFMMEU proposal related to the *Building and Construction Industry Award 2010* and the discussions of this issue from the Conference.

¹⁶ *Report to the Full Bench - Modern Awards Review 2012 - Part-Day Public Holidays* [2012] FWA 10496, 14 December 2012 at [31] to [33].

dealing with hospitality awards¹⁷ as part of the present Review considered a claim directly related to this issue. The relevant provision of the *Hospitality Industry Award 2010* provided as follows:

“32.2(a) An employee other than a casual working on a public holiday will be paid for a minimum of four hours’ work. A casual employee working on a public holiday will be paid for a minimum of two hours’ work.”

[38] The Full Bench found as follows:

“[68] The intent of clause 32.2(a) is to ensure that employees who are required to perform work on public holidays receive a minimum payment. If the hours worked in a ‘stand alone’ shift are all worked on a public holiday then the minimum payment (4 hours for full-time and part-time; 2 hours for casuals) is to be paid at the public holiday rate. The provision is intended to provide a financial disincentive to rostering employees to work for a short period on a public holiday. For example, absent the provision an employer may roster a part time employee to work a 3 hour shift on Christmas day (see clause 29.2(a)). In such circumstances clause 32.2(a) operates to ensure that the employee receives a minimum payment equivalent to the payment for four hours work at the appropriate public holiday rate.”

[69] The variation proposed by the Associations preserves the deterrent effect of the clause while avoiding anomalous outcomes. For example, under the current clause a part-time employee may be rostered for an 8 hour shift commencing at 5pm on the day prior to a public holiday (say a Friday) and finishing at 1am on the public holiday. In such circumstances clause 32.2(a) is open to the interpretation that the employee would receive a minimum payment of 16 hours pay:

- 7 hours at their minimum hourly rate, plus
- 4 hours at the public holiday rate (225%) (i.e. 9 hours at the minimum hourly rate).

[70] Such an outcome is excessive in circumstances where the employee has worked a continuous shift of more than the minimum four hour engagement required by clause 32.2(a). It does not provide ‘a fair and relevant minimum safety net of terms and conditions’ as required by the modern awards objective.”¹⁸

[39] The relevant award was varied to adopt the following revised clause 32.2(a) as proposed by Australian Hotels Association:

“(a) An employee other than a casual working on a public holiday will be paid for a minimum of four hours’ work. A casual employee working on a public holiday will be paid for a minimum of two hours’ work. **Hours of work performed on the day immediately before a public holiday, or immediately after a public holiday, and**

¹⁷ 4 yearly review of modern awards – Restaurant Industry Award 2010 – Hospitality Industry (General) Award 2010 – substantive issues [2018] FWCFB 7263.

¹⁸ Ibid [68] – [70].

that form part of one continuous shift, are counted as part of the minimum hours worked for the purposes of this clause.” (relevant change highlighted)

[40] It is likely that this issue could arise more generally in the case of part-day public holidays as they will often adjoin a normal working day for many employees.

[41] The proposals to change the reference, in the relevant provisions applicable where an employee is not required to work their ordinary hours on a part day public holiday, from ‘ordinary rate of pay’ to either ‘minimum hourly rate’ or ‘the rate applicable under the NES’ warrant further consideration.

[42] There also appears to be prima facie merit in many of the other drafting proposals. The Full Bench may need to balance the desire for clarification in the context of individual modern awards with the degree of complexity associated with the schedules.

6. Further proceedings

[43] Given the history and nature of the matter, I recommend that the Full Bench publish this Report and invite written submissions from interested parties. This would be appropriate for reasons including that some of the drafting proposals made by the parties were only provided shortly before the Conference and may require further discussion and consideration than the current process has allowed.

[44] In the absence of parties seeking a hearing, the Full Bench might then determine the matter on the basis of this Report and those further submissions.

The image shows a handwritten signature in black ink on the left, which appears to be 'S Harris'. To the right of the signature is the official seal of the Fair Work Commission of Australia. The seal is circular with a double border. The outer border contains the text 'THE SEAL OF THE FAIR WORK COMMISSION' at 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

Appearances:

S Harris, of The Pharmacy Guild of Australia.

Y Abousleiman of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU).

S Maxwell of the Construction, Forestry, Mining and Energy Union (Construction and General Division).

H Harrington of Australian Industry Group.

G Jervis of the National Electrical and Communications Association.

M Adler of Housing Industry Association.

G Miller of the Australian Manufacturing Workers' Union.

R Sostarko of Master Builders Australia.

P Ryan of the Australian Hotels Association.

Conference details:

2020

October 21

By Video.

Printed by authority of the Commonwealth Government Printer

<PR723727>

Attachment A

Plain language re-drafted Part-day Public Holiday Schedules

Version 1 applies to the awards listed in Attachment A

Original – Version 1 – Part-day Public Holiday Schedule	Plain Language – Version 1 -- Part-day Public Holiday Schedule
<p>Schedule A—Part-day Public Holidays</p> <p>A.1 This schedule operates in conjunction with award provisions dealing with public holidays.</p> <p>A.2 Where a part-day public holiday is declared or prescribed between 6.00 pm 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:</p> <p>(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.</p> <p>(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 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.</p> <p>(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 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 that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.</p>	<p>Schedule A—Part-day Public Holidays</p> <p>NOTE: Schedule A operates together with award provisions dealing with public holidays and does not detract from or supplement the NES. See sections 89, 90, 98, 99 and 114 to 116 of the Act.</p> <p>A.1 Schedule A applies on a part-day declared or prescribed by a law of a State or Territory or a region of the State or Territory to be a public holiday (the part-day public holiday).</p> <p>A.2 The following provisions apply on the part-day public holiday and override any provision in this award relating to public holidays to the extent of any inconsistency:</p> <p>A.2.1 all employees have the right to refuse to work on the part-day public holiday if a request to work is not reasonable or if refusal is reasonable, as provided for in the NES;</p> <p>A.2.2 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but exercises their right under the NES not to work, then they must be paid for the hours not worked at the rate of pay applicable to their ordinary hours during that time;</p> <p>A.2.3 if an employee works any hours on the part-day public holiday, then they must be paid at the public holiday penalty rate in this award applicable to the hours worked;</p>

Original – Version 1 – Part-day Public Holiday Schedule	Plain Language – Version 1 -- Part-day Public Holiday Schedule
<p>(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, 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.</p> <p>(e) Where an employee works any hours on the declared or prescribed part-day public holiday they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.</p> <p>(f) An employee not rostered to work on the declared or prescribed part-day public holiday, other than an employee who has exercised their right in accordance with clause J.2(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.</p> <p>(g) Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.</p> <p>A.3 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.</p> <p>A.4 This schedule is not intended to detract from or supplement the NES.</p>	<p>A.2.4 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but does not work because they are on annual or personal/carer’s leave, then they are taken not to be on annual or personal/carer’s leave during those hours and must be paid at the rate of pay applicable to their ordinary hours during that time;</p> <p>A.2.5 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but does not work because they are on a rostered day off or accrued day off, then they are taken to be on a public holiday for those hours and must be paid at the rate of pay applicable to their ordinary hours during that time;</p> <p>A.2.6 if an employee, other than an employee who has exercised their right to refuse to work in accordance with clause A.2.1, is not rostered to work on the part-day public holiday, then they are not entitled to another day off, another day’s pay or another day of annual or personal/carer’s leave as a result of the part-day public holiday.</p> <p>A.3 An employer and employee may agree to substitute another part-day as the part-day public holiday for the part-day public holiday under clause A.1.</p>

Attachment A

VERSION 1 – Awards affected:

1. *Airline Operations—Ground Staff Award 2020*
2. *Building and Construction General On-site Award 2010*
3. *Electrical, Electronic and Communications Contracting Award 2010*
4. *Electrical Power Industry Award 2020*

5. *Food, Beverage and Tobacco Manufacturing Award 2010*
6. *Graphic Arts, Printing and Publishing Award 2010*
7. *Joinery and Building Trades Award 2010*
8. *Mobile Crane Hiring Award 2010*
9. *Plumbing and Fire Sprinklers Award 2010*
10. *Surveying Award 2020*
11. *Textile, Clothing, Footwear and Associated Industries Award 2010*
12. *Vehicle Repair, Services and Retail Award 2020*

Version 2 is tailored to include a provision (clause A.2.6) applying to employees being paid an annualised wage.

Version 2 applies to the awards listed in Attachment A

Original – Version 2 – Part-day Public Holiday Schedule	Plain Language – Version 2 -- Part-day Public Holiday Schedule
<p>Schedule A—Part-day Public Holidays</p> <p>A.1 This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the NES.</p> <p>A.2 Where a part-day public holiday is declared or prescribed between 6.00 pm 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:</p> <p>(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.</p> <p>(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 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.</p> <p>(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 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 that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.</p>	<p>Schedule A—Part-day Public Holidays</p> <p>NOTE: Schedule A operates together with award provisions dealing with public holidays and does not detract from or supplement the NES. See sections 89, 90, 98, 99 and 114 to 116 of the Act.</p> <p>A.1 Schedule A applies on a part-day declared or prescribed by a law of a State or Territory or a region of the State or Territory to be a public holiday (the part-day public holiday).</p> <p>A.2 The following provisions apply on the part-day public holiday and override any provision in this award relating to public holidays to the extent of any inconsistency:</p> <p>A.2.1 all employees have the right to refuse to work on the part-day public holiday if a request to work is not reasonable or if refusal is reasonable, as provided for in the NES;</p> <p>A.2.2 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but exercises their right under the NES not to work, then they must be paid for the hours not worked at the rate of pay applicable to their ordinary hours during that time;</p> <p>A.2.3 if an employee, other than an employee paid an annualised wage under this award, works any hours on the part-day public holiday, then they must be paid at the public holiday penalty rate in this award applicable to the hours worked;</p>

Original – Version 2 – Part-day Public Holiday Schedule	Plain Language – Version 2 -- Part-day Public Holiday Schedule
<p>(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, 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.</p> <p>(e) Excluding annualised salaried employees to whom clause A.2(f) applies, where an employee works any hours on the declared or prescribed part-day public holiday they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.</p> <p>(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.</p> <p>(g) An employee not rostered to work on the declared or prescribed part-day public holiday, other than an employee who has exercised their right in accordance with clause A.2(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.</p> <p>A.3 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.</p> <p>A.4 This schedule is not intended to detract from or supplement the NES</p>	<p>A.2.4 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but does not work because they are on annual or personal/carer’s leave, then they are taken not to be on annual or personal/carer’s leave during those hours and must be paid at the rate of pay applicable to their ordinary hours during that time;</p> <p>A.2.5 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but does not work because they are on a rostered day off or accrued day off, then they are taken to be on a public holiday for those hours and must be paid at the rate of pay applicable to their ordinary hours during that time;</p> <p>A.2.6 if an employee is paid an annualised wage and is entitled under this award either to take time off instead of being paid or to take additional annual leave for work on a public holiday, then they are entitled either to take time off instead of being paid or to take the pro-rata annual leave equivalent to the hours worked on the part-day public holiday;</p> <p>A.2.7 if an employee, other than an employee who has exercised their right to refuse to work in accordance with clause A.2.1, is not rostered to work on the part-day public holiday, then they are not entitled to another day off, another day’s pay or another day of annual or personal/carer’s leave as a result of the part-day public holiday.</p> <p>A.3 An employer and employee may agree to substitute another part-day as the part-day public holiday for the part-day public holiday under clause A.1.</p>

Attachment A**VERSION 2 – Inserted into the following Awards:****(a) Awards containing Version 2 that contain a specific annualised wage arrangement clause:**

NOTE A Full Bench ([AM2016/13](#)) is currently dealing with annualised wage arrangements. Common annualised wage arrangements were inserted into a [number of awards](#) and took effect on 1 March 2020. Certain awards with proposed award-specific clauses are yet to be determined.

1. *Banking, Finance and Insurance Award 2020*
2. *Broadcasting and Recorded Entertainment Award 2010*
3. *Clerks—Private Sector Award 2020*
4. *Contract Call Centre Award 2020*
5. *Horticulture Award 2010*
6. *Hospitality Industry (General) Award 2020*
7. *Legal Services Award 2020*
8. *Local Government Industry Award 2020*
9. *Mining Industry Award 2020*
10. *Pastoral Award 2010*
11. *Pharmacy Industry Award 2020*
12. *Restaurant Industry Award 2020*
13. *Salt Industry Award 2010*
14. *State Government Agencies Award 2020*
15. *Telecommunications Services Award 2010*
16. *Wool Storage, Sampling and Testing Award 2010*

(b) Awards containing Version 2 that do not contain a specific annualised wage arrangement clause:

1. *Aboriginal Community Controlled Health Services Award 2020*
2. *Aged Care Award 2010*
3. *Air Pilots Award 2020*
4. *Aircraft Cabin Crew Award 2020*

5. *Ambulance and Patient Transport Industry Award 2020*
6. *Amusement, Events and Recreation Award 2020*
7. *Animal Care and Veterinary Services Award 2020*
8. *Book Industry Award 2020*
9. *Business Equipment Award 2020*
10. *Car Parking Award 2020*
11. *Cemetery Industry Award 2020*
12. *Children's Services Award 2010*
13. *Cleaning Services Award 2020*
14. *Commercial Sales Award 2020*
15. *Corrections and Detention (Private Sector) Award 2020*
16. *Dry Cleaning and Laundry Industry Award 2020*
17. *Educational Services (Schools) General Staff Award 2020*
18. *Educational Services (Teachers) Award 2010*
19. *Fire Fighting Industry Award 2020*
20. *Fitness Industry Award 2010*
21. *Funeral Industry Award 2010*
22. *Gardening and Landscaping Services Award 2020*
23. *General Retail Industry Award 2010*
24. *Hair and Beauty Industry Award 2010*
25. *Health Professionals and Support Services Award 2020*
26. *Higher Education Industry—Academic Staff—Award 2020*
27. *Higher Education Industry—General Staff—Award 2020*
28. *Horse and Greyhound Training Award 2020*
29. *Journalists Published Media Award 2020*
30. *Labour Market Assistance Industry Award 2020*
31. *Live Performance Award 2010*
32. *Mannequins and Models Award 2020*
33. *Market and Social Research Award 2020*
34. *Meat Industry Award 2020*

35. *Medical Practitioners Award 2020*
36. *Miscellaneous Award 2020*
37. *Nursery Award 2020*
38. *Nurses Award 2010*
39. *Passenger Vehicle Transportation Award 2020*
40. *Pest Control Industry Award 2020*
41. *Racing Clubs Events Award 2010*
42. *Racing Industry Ground Maintenance Award 2020*
43. *Registered and Licensed Clubs Award 2010*
44. *Road Transport (Long Distance Operations) Award 2020*
45. *Road Transport and Distribution Award 2020*
46. *Security Services Industry Award 2020*
47. *Silviculture Award 2020*
48. *Social, Community, Home Care and Disability Services Industry Award 2010*
49. *Sporting Organisations Award 2020*
50. *Storage Services and Wholesale Award 2020*
51. *Supported Employment Services Award 2020*
52. *Transport (Cash in Transit) Award 2020*
53. *Travelling Shows Award 2020*
54. *Waste Management Award 2020*
55. *Wine Industry Award 2010*

(c) Awards containing Version 2 that contain a minimum wage expressed as an annual wage; or reference to working annualised hours in the ordinary hours of work clause; or commission only employment:

1. *Architects Award 2020*
2. *Educational Services (Post-Secondary Education) Award 2020*
3. *Real Estate Industry Award 2020*

Version 3 is tailored to include provisions applying to employees being paid an annualised wage.

Version 3 applies to the awards listed in **Attachment A**

Original – Version 3 – Part-day Public Holiday Schedule	Plain Language – Version 3 -- Part-day Public Holiday Schedule
<p>Schedule A—Part-day Public Holidays</p> <p>A.1 This schedule operates in conjunction with award provisions dealing with public holidays.</p> <p>A.2 Where a part-day public holiday is declared or prescribed between 6.00 pm 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:</p> <p>(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.</p> <p>(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 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.</p> <p>(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 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 that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.</p> <p>(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, but</p>	<p>Schedule A—Part-day Public Holidays</p> <p>NOTE: Schedule A operates together with award provisions dealing with public holidays and does not detract from or supplement the NES. See sections 89, 90, 98, 99 and 114 to 116 of the Act.</p> <p>A.1 Schedule A applies on a part-day declared or prescribed by a law of a State or Territory or a region of the State or Territory to be a public holiday (the part-day public holiday).</p> <p>A.2 The following provisions apply on the part-day public holiday and override any provision in this award relating to public holidays to the extent of the inconsistency:</p> <p>A.2.1 all employees have the right to refuse to work on the part-day public holiday if a request to work is not reasonable or if refusal is reasonable, as provided for in the NES;</p> <p>A.2.2 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but exercises their right under the NES not to work, then they must be paid for the hours not worked at the rate of pay applicable to their ordinary hours during that time;</p> <p>A.2.3 if an employee, other than an employee paid an annualised wage under this award, works any hours on the part-day public holiday, then they must be paid at the public holiday penalty rate in this award applicable to the hours worked;</p> <p>A.2.4 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but does not work because they are on annual or personal/carer’s leave, then they are taken not to be on annual or personal/carer’s</p>

Original – Version 3 – Part-day Public Holiday Schedule	Plain Language – Version 3 -- Part-day Public Holiday Schedule
<p>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.</p> <p>(e) Excluding annualised salaried employees to whom clause A.2(f) applies, where an employee works any hours on the declared or prescribed part-day public holiday they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.</p> <p>(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.</p> <p>(g) An employee not rostered to work on the declared or prescribed part-day public holiday, other than an employee who has exercised their right in accordance with clause A.2(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.</p> <p>(h) Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.</p> <p>A.3 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.</p> <p>A.4 This schedule is not intended to detract from or supplement the NES.</p>	<p>leave during those hours and must be paid at the rate of pay applicable to their ordinary hours during that time;</p> <p>A.2.5 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but does not work because they are on a rostered day off or accrued day off, then they are taken to be on a public holiday for those hours and must be paid at the rate of pay applicable to their ordinary hours during that time;</p> <p>A.2.6 if an employee is paid an annualised wage and is entitled under this award either to take time off instead of being paid or to take additional annual leave for work on a public holiday, then they are entitled either to take time off instead of being paid or to take the pro-rata annual leave equivalent to the hours worked on the part-day public holiday;</p> <p>A.2.7 if an employee, other than an employee who has exercised their right to refuse to work in accordance with clause A.2.1, is not rostered to work on the part-day public holiday, then they are not entitled to another day off, another day’s pay or another day of annual or personal/carer’s leave as a result of the part-day public holiday.</p> <p>A.3 An employer and employee may agree to substitute another part-day as the part-day public holiday for the part-day public holiday under clause A.1.</p>

Attachment A:

VERSION 3 – Inserted into the following Awards:

(a) Awards containing Version 3 that also contain a specific annualised wage arrangement clause:

NOTE A Full Bench ([AM2016/13](#)) is currently dealing with annualised wage arrangements. Common annualised wage arrangements were inserted into a [number of awards](#) and took effect on 1 March 2020. Certain awards with proposed award-specific clauses are yet to be determined.

1. *Hydrocarbons Industry (Upstream) Award 2020*
2. *Manufacturing and Associated Industries and Occupations Award 2010*
3. *Oil Refining and Manufacturing Award 2010*
4. *Water Industry Award 2020*

(b) Awards containing Version 3 that do not contain a specific annualised wage arrangement clause:

1. *Airport Employees Award 2020*
2. *Aquaculture Industry Award 2020*
3. *Asphalt Industry Award 2020*
4. *Cement, Lime and Quarrying Award 2020*
5. *Concrete Products Award 2020*
6. *Dredging Industry Award 2020*
7. *Gas Industry Award 2020*
8. *Hydrocarbons Field Geologists Award 2020*
9. *Marine Tourism and Charter Vessels Award 2020*
10. *Marine Towage Award 2020*
11. *Maritime Offshore Oil and Gas Award 2020*
12. *Pharmaceutical Industry Award 2010*
13. *Ports, Harbours and Enclosed Water Vessels Award 2020*
14. *Poultry Processing Award 2020*
15. *Premixed Concrete Award 2020*
16. *Professional Diving Industry (Industrial) Award 2020*

17. *Professional Diving Industry (Recreational) Award 2020*
18. *Seafood Processing Award 2020*
19. *Seagoing Industry Award 2020*
20. *Stevedoring Industry Award 2020*

Version 4 applies to the *Fast Food Industry Award 2010* only

Version 4 is tailored to include a provision (A.2.6) applying to employees being paid an annualised wage, and does not include the provision in other versions (A.2.7 – versions 2 and 3) relating to employees not rostered to work at the time of the part-day public holiday.

Original – Version 4 – Part-day Public Holiday Schedule	Plain Language – Version 4 -- Part-day Public Holiday Schedule
<p>Schedule A—Part-day Public Holidays</p> <p>This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the NES.</p> <p>A.1 Where a part-day public holiday is declared or prescribed between 6.00 pm 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:</p> <p>(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.</p> <p>(b) Where a part-time or full-time employee is usually rostered to work ordinary hours between on the declared or prescribed part-day public holiday 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.</p> <p>(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 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 that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.</p>	<p>Schedule A—Part-day Public Holidays</p> <p>NOTE: Schedule A operates together with award provisions dealing with public holidays and does not detract from or supplement the NES. See sections 89, 90, 98, 99 and 114 to 116 of the Act.</p> <p>A.1 Schedule A applies on a part-day declared or prescribed by a law of a State or Territory or a region of the State or Territory to be a public holiday (the part-day public holiday).</p> <p>A.2 The following provisions apply on the part-day public holiday and override any provision in this award relating to public holidays to the extent of the inconsistency:</p> <p>A.2.1 all employees have the right to refuse to work on the part-day public holiday if a request to work is not reasonable or if refusal is reasonable, as provided for in the NES;</p> <p>A.2.2 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but exercises their right under the NES not to work, then they must be paid for the hours not worked at the rate of pay applicable to their ordinary hours during that time;</p> <p>A.2.3 if an employee, other than an employee paid an annualised wage under this award, works any hours on the part-day public holiday, then they must be paid at the public holiday penalty rate in this award applicable to the hours worked;</p>

Original – Version 4 – Part-day Public Holiday Schedule	Plain Language – Version 4 -- Part-day Public Holiday Schedule
<p>(d) Where a part-time or full-time employee is usually rostered to work ordinary hours between on the declared or prescribed part-day public holiday, 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.</p> <p>(e) Excluding annualised salaried employees to whom clause A.1(f) applies, where an employee works any hours on the declared or prescribed part-day public holiday they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.</p> <p>(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 between on the declared or prescribed part-day public holiday.</p> <p>A.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.</p>	<p>A.2.4 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but does not work because they are on annual or personal/carer’s leave, then they are taken not to be on annual or personal/carer’s leave during those hours and must be paid at the rate of pay applicable to their ordinary hours during that time;</p> <p>A.2.5 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but does not work because they are on a rostered day off or accrued day off, then they are taken to be on a public holiday for those hours and must be paid at the rate of pay applicable to their ordinary hours during that time;</p> <p>A.2.6 if an employee is paid an annualised wage and is entitled under this award either to take time off instead of being paid or to take additional annual leave for work on a public holiday, then they are entitled either to take time off instead of being paid or to take the pro-rata annual leave equivalent to the hours worked on the part-day public holiday.</p> <p>A.3 An employer and employee may agree to substitute another part-day as the part-day public holiday for the part-day public holiday under clause A.1.</p>

Version 5 applies to the *Timber Industry Award 2010* only

Version 5 is tailored to include provisions (A.2.6 and A.2.7) applying to employees whose ordinary pattern of work involves rostered shifts which include the part-day public holiday hours and does not include the provision in other versions (A.2.7 – versions 2 and 3) relating to employees not rostered to work at the time of the part-day public holiday.

Original – Version 5 – Part-day Public Holiday Schedule	Plain Language – Version 5 -- Part-day Public Holiday Schedule
<p>Schedule B Schedule A—Part-day Public Holidays</p> <p>This schedule operates in conjunction with award provisions dealing with public holidays.</p> <p>A.1 Where a part-day public holiday is declared or prescribed between 6.00 pm 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:</p> <p>(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.</p> <p>(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 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.</p> <p>(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 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 that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.</p>	<p>Schedule C Schedule A—Part-day Public Holidays</p> <p>NOTE: Schedule A operates together with award provisions dealing with public holidays and does not detract from or supplement the NES. See sections 89, 90, 98, 99 and 114 to 116 of the Act.</p> <p>A.1 Schedule A applies on a part-day declared or prescribed by a law of a State or Territory or a region of the State or Territory to be a public holiday (the part-day public holiday).</p> <p>A.2 The following provisions apply on the part-day public holiday and override any provision in this award relating to public holidays to the extent of the inconsistency:</p> <p>A.2.1 all employees have the right to refuse to work on the part-day public holiday if a request to work is not reasonable or if refusal is reasonable, as provided for in the NES;</p> <p>A.2.2 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but exercises their right under the NES not to work, then they must be paid for the hours not worked at the rate of pay applicable to their ordinary hours during that time;</p> <p>A.2.3 if an employee works any hours on the part-day public holiday, then they must be paid at the public holiday penalty rate in this award applicable to the hours worked;</p>

Original – Version 5 – Part-day Public Holiday Schedule	Plain Language – Version 5 -- Part-day Public Holiday Schedule
<p>(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, 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.</p> <p>(e) Where an employee works any hours on the declared or prescribed part-day public holiday they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.</p> <p>(f) An employee whose ordinary pattern of work involves rostered shifts which include the hours on the declared or prescribed part-day public holiday but who is not rostered to work on the declared or prescribed part-day public holiday, 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. 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 shall not be entitled to the benefit of clauses 36.3 and 36.4 of this award.</p> <p>A.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.</p>	<p>A.2.4 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but does not work because they are on annual or personal/carer’s leave, then they are taken not to be on annual or personal/carer’s leave during those hours and must be paid at the rate of pay applicable to their ordinary hours during that time;</p> <p>A.2.5 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but does not work because they are on a rostered day off or accrued day off, then they are taken to be on a public holiday for those hours and must be paid at the rate of pay applicable to their ordinary hours during that time;</p> <p>A.2.6 if an employee’s ordinary pattern of work involves rostered shifts which include the part-day public holiday hours and they are entitled to the benefit of clause 36.3 or 36.4 but they are not rostered to work on the part-day public holiday, then they are entitled to the benefit of clause 36.3 or 36.4 on a pro-rata basis for the number of ordinary hours on the part-day public holiday;</p> <p>A.2.7 if an employee’s ordinary pattern of work does not include rostered shifts which include the part-day public holiday hours, then they are not entitled to the benefit of clause 36.3 or 36.4.</p> <p>A.3 An employer and employee may agree to substitute another part-day as the part-day public holiday for the part-day public holiday under clause A.1.</p>

Attachment B

Plain language re-drafted Part-day Public Holiday Schedules Parties' suggested amendments

Ai Group's suggested amendments

Ai Group submission dated [16 October 2020](#)

- Proposed clause A.1 of all versions should be amended as follows (paras 4 – 15):

A.1 Schedule A applies on ~~a part-day declared or prescribed by a law of a State or Territory or a region of the State or Territory to be a public holiday (the part-day public holiday)~~ any part-day which is a part-day public holiday for the purposes of the NES.
- Proposed clause A.2.3 of all versions should be amended as follows (paras 47 – 49):

A.2.3 if an employee works any hours on the part-day public holiday, then they must be paid at the public holiday penalty rate (if any) in this award applicable to the hours worked;
- Proposed clause A.2.5 of all versions should be amended as follows (paras 41 – 43):

A.2.5 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but does not work because they are on a rostered day off ~~or accrued day off~~, then they are taken to be on a public holiday for those hours and must be paid at the rate of pay applicable to their ordinary hours during that time;
- Proposed clause A.2.3 of Version 4 should be amended as follows (paras 22 – 25):

A.2.3 if an employee, ~~other than an employee paid an annualised wage under this award,~~ works any hours on the part-day public holiday, then they must be paid at the public holiday penalty rate in this award applicable to the hours worked;
- Proposed clause A.2.6 of Version 4 should be deleted (paras 22 – 25).

LGA's suggested amendments

LGA submission dated [16 October 2020](#)

- Proposed clause A.2.5 of all versions should be amended as follows (paras 9 – 15):

A.2.5 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but does not work because they are on a rostered day off ~~or accrued day off~~, while employed on a 7 day a week rotating roster system or on an accrued rostered day off, then they are taken to be on a public holiday for those hours and must be paid at the rate of pay applicable to their ordinary hours during that time;

CFMMEU's suggested amendments

CFMMEU submission dated [16 October 2020](#)

- Proposed Schedule for the *Building and Construction General On-site Award 2010* (Attachment 1):

Schedule A—Part-day Public Holidays

NOTE: Schedule A operates together with award provisions dealing with public holidays and does not detract from or supplement the NES. See sections 89, 90, 98, 99 and 114 to 116 of the Act.

A.1 Schedule A applies on a part-day or half-day declared or prescribed by a law of a State or Territory or a region of the State or Territory to be a public holiday (the part-day public holiday).

A.2 The following provisions apply on the part-day public holiday and override any provision in this award relating to public holidays to the extent of any inconsistency:

A.2.1 all employees have the right to refuse to work on the part-day public holiday if a request to work is not reasonable or if refusal is reasonable, as provided for in the NES;

A.2.2 if a part-time weekly hire, full-time weekly hire or daily hire employee ~~full-time or part-time employee~~ is usually rostered to work ordinary hours during the period of ~~on~~ the part-day public holiday but exercises their right under the NES not to work, then they must be paid for the hours not worked at the rate of pay applicable to their ordinary hours during that time;

A.2.3 if an employee works any hours during the period of ~~on~~ the part-day public holiday, then they must be paid at the public holiday penalty rate and for the minimum period as provided for in this award applicable to the hours worked;

A.2.4 if a part-time weekly hire, full-time weekly hire or daily hire employee ~~full-time or part-time employee~~ is usually rostered to work ordinary hours during the period of ~~on~~ the part-day public holiday but does not work because they are on annual or personal/carer's leave, then they are taken not to be on annual or personal/carer's ordinary hours during that time;

A.2.5 if a part-time weekly hire, full-time weekly hire or daily hire employee ~~full-time or part-time employee~~ is usually rostered to work ordinary hours during the period of ~~on~~ the part-day public holiday but does not work because they are on a rostered day off (RDO) ~~or accrued day off~~, then they are taken to be on a public holiday for those hours and must be paid at the rate of pay applicable to their ordinary hours during that time and the accrued RDO entitlement that would have been payable for such hours will be banked and be available to be taken at another time agreed to between the employer and employee;

A.2.6 if an employee, other than an employee who has exercised their right to refuse to work in accordance with clause A.2.1, is not rostered to work on the part-day public

holiday, then they are not entitled to another day off, another day's pay or another day of annual or personal/carer's leave as a result of the part-day public holiday.

A.3 An employer and employee may agree to substitute another part-day as the part-day public holiday for the part-day public holiday under clause A.1.

PGA's suggested amendments

PGA submission dated [16 October 2020](#)

- Proposed clause A.2.2 of all versions should be amended as follows (paras 3 – 12):

A.2.2 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but exercises their right under the [NES](#) not to work, then they must be paid for the hours not worked at ~~the rate of pay applicable to their ordinary hours during that time~~ their minimum hourly rate;

- Proposed clause A.2.4 of all versions should be amended as follows (paras 3 – 12):

A.2.4 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but does not work because they are on annual or personal/carer's leave, then they are taken not to be on annual or personal/carer's leave during those hours and must be paid at ~~the rate of pay applicable to their ordinary hours during that time~~ their minimum hourly rate;

- Proposed clause A.2.5 of all versions should be amended as follows (paras 3 – 12):

A.2.5 if a full-time or part-time employee is usually rostered to work ordinary hours on the part-day public holiday but does not work because they are on a rostered day off or accrued day off, then they are taken to be on a public holiday for those hours and must be paid at ~~the rate of pay applicable to their ordinary hours during that time~~ their minimum hourly rate;