



Minister for Education and Minister for Industrial Relations

10 DEC 2019

Justice IJK Ross AO
President
Fair Work Commission
Email: chambers.ross.j@fwc.gov.au

1 William Street Brisbane 4000
PO Box 15033 City East
Queensland 4002 Australia
Telephone +61 7 3719 7110
Email: education@ministerial.qld.gov.au
Email: industrialrelations@ministerial.qld.gov.au

Dear Justice Ross

I wish to advise that on 27 November 2019, the Queensland Parliament passed *the Holidays and Other Legislation Amendment Bill 2019*, which amended the *Holidays Act 1983* to observe a part-day public holiday from 6:00 pm to midnight on 24 December (Christmas Eve). The legislation will commence on assent and be effective for 24 December (Christmas Eve) 2019. A copy of the relevant sections of the amending legislation is enclosed.

As you know, the jurisdiction to determine industrial relations entitlements for private sector employees on public holidays rests with the Australian Government. However, the *Fair Work Act 2009* (the FW Act) recognises days or part-days declared or prescribed by or under a law of a state as public holidays. Accordingly, entitlements to wages for time worked on public holidays (including penalty rates) are determined by the relevant federal modern award or agreement. The FW Act also provides that an employee is entitled to be absent from their employment in reasonable circumstances on a day or part-day which is a public holiday and still receive their base rate of pay for their ordinary hours of work on that day or part-day. These public holiday entitlements are thus activated during the prescribed hours on Christmas Eve by Queensland's declaration of a part-day public holiday at that time.

The majority of modern awards include a clause/schedule providing specific entitlements in respect of a part-day public holiday. In relation to employees who do not work on a part-day public holiday as a result of having a rostered day off, the entitlement is that such an employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.

I am informed that such provisions were inserted into 113 modern awards by Fair Work Australia Full Bench decision FWAFB 10738 on 21 December 2012 in response to correspondence from the South Australian Minister for Industrial Relations. The correspondence raised certain issues about part-day public holidays in South Australia and requested Fair Work Australia to consider utilising its powers pursuant to section 160 of the FW Act *to vary relevant modern awards prior to 24 December 2012 to remove the ambiguities relating to part-day public holidays*. The making of that decision using the powers in section 160 of the FW Act permitting the tribunal to make a determination varying a modern award was noted in the decision and also supported by a number of other parties.

Understandably, the part-day public holiday clauses/schedules inserted in modern awards as a result of that decision only dealt with specific arrangements arising from the 2012 South Australian legislative amendments to observe a part-day public holiday from 7:00 pm to midnight on Christmas Eve (24 December) and New Year's Eve (31 December) each year. Those clause/schedules are considered to not be applicable to entitlements arising from Queensland's part-day Christmas Eve public holiday which commences from 6:00 pm.

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.

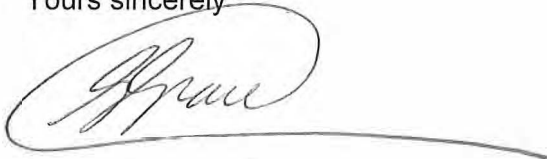
To remove this ambiguity and establish specific provisions governing entitlements on a part-day public holiday as provided for in Queensland, I wish to draw the Fair Work Commission's attention to this matter. The Fair Work Commission may consider it appropriate and effective to vary the clauses/schedules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

If your officers require further information or assistance, please contact Mr Tony Schostakowski, Director, Regulation and Compliance, Industrial Relations, Office of Industrial Relations, on (07) 3406 9856.

I trust this information is of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Grace', with a long horizontal flourish extending to the right.

GRACE GRACE MP
Minister for Education and
Minister for Industrial Relations

Ref: 19/669659; FILE31873; REC31875

Enc



Queensland

Holidays and Other Legislation Amendment Bill 2019



Queensland

Holidays and Other Legislation Amendment Bill 2019

Contents

		Page
Part 1	Preliminary	
1	Short title	4
Part 2	Amendment of Holidays Act 1983	
2	Act amended	4
3	Amendment of s 2 (Public holidays)	4
Part 3	Amendment of Industrial Relations Act 2016	
4	Act amended	5
5	Amendment of s 332 (Employee stood down in December then re-employed in January)	5
6	Amendment of sch 5 (Dictionary)	5
Part 4	Other amendments	
Division 1	Amendment of Building and Construction Industry (Portable Long Service Leave) Act 1991	
7	Act amended	6
8	Amendment of schedule (Dictionary)	6
Division 2	Amendment of Contract Cleaning Industry (Portable Long Service Leave) Act 2005	
9	Act amended	6
10	Amendment of sch 2 (Dictionary)	6

2019

A Bill

for

An Act to amend the *Building and Construction Industry (Portable Long Service Leave) Act 1991*, the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*, the *Holidays Act 1983* and the *Industrial Relations Act 2016* for particular purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3
This Act may be cited as the *Holidays and Other Legislation Amendment Act 2019*. 4
5

Part 2 Amendment of Holidays Act 1983 6
7

Clause 2 Act amended 8
This part amends the *Holidays Act 1983*. 9

Clause 3 Amendment of s 2 (Public holidays) 10
Section 2— 11
insert— 12
(3) A public holiday is to be observed for the part of 13
the day on 24 December (Christmas Eve) from 14
6p.m. to midnight. 15
(4) However, subsection (3) applies only for working 16
out a person's entitlements under— 17
(a) the *Industrial Relations Act 2016* or an 18
industrial instrument within the meaning of 19
that Act; or 20
(b) the *Fair Work Act 2009* (Cwlth) or a federal 21
industrial instrument; or 22
(c) the *Building and Construction Industry* 23
(*Portable Long Service Leave*) Act 1991; or 24

	(d) the <i>Contract Cleaning Industry (Portable Long Service Leave) Act 2005</i> .	1 2
Part 3	Amendment of Industrial Relations Act 2016	3 4
Clause 4	Act amended	5
	This part amends the <i>Industrial Relations Act 2016</i> .	6
Clause 5	Amendment of s 332 (Employee stood down in December then re-employed in January)	7 8
	Section 332(2), after ‘for the’—	9
	<i>insert—</i>	10
	Christmas Eve (from 6p.m. to midnight),	11
Clause 6	Amendment of sch 5 (Dictionary)	12
	Schedule 5, definition <i>public holiday</i> —	13
	<i>insert—</i>	14
	(d) for working out a person’s entitlements under this Act or an industrial instrument—	15 16
	the part-day that is a public holiday under the <i>Holidays Act 1983</i> , section 2(3).	17 18

[s 7]

Part 4	Other amendments	1
Division 1	Amendment of Building and Construction Industry (Portable Long Service Leave) Act 1991	2 3 4
Clause 7	Act amended	5
	This division amends the <i>Building and Construction Industry (Portable Long Service Leave) Act 1991</i> .	6 7
Clause 8	Amendment of schedule (Dictionary)	8
	Schedule—	9
	<i>insert—</i>	10
	<i>public holiday</i> includes, for working out a person's entitlements under this Act, the part-day that is a public holiday under the <i>Holidays Act 1983</i> , section 2(3).	11 12 13 14
Division 2	Amendment of Contract Cleaning Industry (Portable Long Service Leave) Act 2005	15 16 17
Clause 9	Act amended	18
	This division amends the <i>Contract Cleaning Industry (Portable Long Service Leave) Act 2005</i> .	19 20
Clause 10	Amendment of sch 2 (Dictionary)	21
	Schedule 2—	22
	<i>insert—</i>	23
	<i>public holiday</i> includes, for working out a	24

[s 10]

person's entitlements under this Act, the part-day 1
that is a public holiday under the *Holidays Act* 2
1983, section 2(3). 3

© State of Queensland 2019