

[2021] FWC 1148

The attached document replaces the document previously issued with the above code on 3 March 2021.

The award name at the top of the list in paragraph [8] has been amended from *Aboriginal Community Controlled Health Services Award 2020* to *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020*.

Modern Awards, Economics and Research Section
On behalf of the Associate to President Ross

Dated 3 March 2021



STATEMENT

Fair Work Act 2009

s.157—FWC may vary etc. modern awards if necessary to achieve modern awards objective

COVID-19 pandemic—Schedules

(AM2020/93; AM2020/13)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 3 MARCH 2021

Schedule X—Additional measures during the COVID-19 pandemic – Schedule Y—Industry Specific Measures During the COVID-19 Pandemic – schedules due to cease operation.

Background

[1] This Statement deals with the COVID-19 related pandemic schedules that have been inserted into the majority of awards since April 2020 and are due to expire on 29 March 2021.

Schedule X—Additional measures during the COVID-19 pandemic

[2] In a decision issued on 8 April 2020¹ (the *April 2020 Decision*), a Full Bench of the Commission, acting on its own initiative, varied 99 modern awards to insert a new Schedule X—Additional measures during the COVID-19 pandemic. Schedule X provides an entitlement to unpaid ‘pandemic leave’ and the flexibility to take twice as much annual leave at half pay. Schedule X was to operate until 30 June 2020.

[3] A statement issued on 23 June 2020² indicated that the Commission did not propose to vary Schedule X to extend its operation past 30 June 2020 on its own motion. Parties wishing to extend the operation of the schedule were invited to make an application. A number of applications were filed to extend the operation of Schedule X in various awards.

[4] In a decision³ issued on 1 July 2020 the Full Bench expressed a *provisional* view that the operative date of Schedule X in each of these awards be extended to 30 September 2020. The Full Bench confirmed its *provisional* view in a decision issued on 2 July 2020.⁴

¹ [2020] FWCFCB 1837.

² [2020] FWCFCB 3281.

³ [2020] FWCFCB 3444.

⁴ [2020] FWCFCB 3490.

[5] In August 2020, Schedule X was inserted into a further three modern awards by a separately constituted Full Bench.⁵

[6] On 16 September 2020 the Full Bench issued a statement⁶ in which it expressed a *provisional* view that the operation of Schedule X in 71 modern awards should be extended until 29 March 2021. A supplementary statement was issued on 18 September 2020 extending the *provisional* view to a further 3 modern awards.⁷

[7] On 24 September 2020 the Full Bench issued a decision⁸ extending the operation of Schedule X in 74 modern awards until 29 March 2021. Variation determinations for the 74 awards were issued together with the decision.

Schedules X and Y in the Health Sector Awards

[8] The following awards (collectively “Health Sector Awards”) were included in the 99 awards varied as a result of the *April 2020 Decision*:

- *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020*;
- *Aged Care Aware 2010* (Aged Care Award);
- *Ambulance and Patience Transport Industry Award 2020*;
- *Health Professionals and Support Services Award 2020* (Health Professionals Award);
- *Medical Practitioners Award 2020*;
- *Nurses Award 2010* (Nurses Award);
- *Pharmacy Industry Award 2020*;
- *Social, Community, Home Care and Disability Services Industry Award 2010*; and
- *Supported Employment Services Award 2020*.

[9] Applications by various unions to insert an entitlement to paid pandemic leave in the Health Sector Awards, and the responsibility for any extension of the operative period of the Schedule X in the Health Sector Awards, were referred to another Full Bench ([AM2020/13](#)) for determination.

[10] The operation of Schedule X in each of these awards was extended until “further or other order of the Commission in matter number AM2020/13”. In October 2020, Schedule X

⁵ [2020] FWCFB 4126.

⁶ [2020] FWCFB 4986.

⁷ [2020] FWCFB 5028; [2020] FWCFB 4986.

⁸ [2020] FWCFB 5137.

in the Health Sector Awards was varied to allow for periods of unpaid pandemic leave or annual leave at half pay to commence before 29 March 2021.

[11] The Health Sector Awards Full Bench also inserted an entitlement to paid pandemic leave into the Aged Care Award, the Nurses Award and the Health Professionals Award awards (Schedule Y).⁹ Schedule Y is also due to cease operation on 29 March 2021.¹⁰

Next steps

[12] As set out above, Schedule X is due to cease operation in 74 modern awards on 29 March 2021. Schedule Y is also due to cease operation on 29 March 2021. Any party who wishes to extend the operation of the schedules in a particular award should make an application by **4pm on Monday 22 March 2021**. Applications should be sent to amod@fwc.gov.au.

PRESIDENT

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⁹ [2020] FWCFB 3940.

¹⁰ [2020] FWCFB 5768.