

[2022] FWCFB 15

The attached document replaces the document previously issued with the above code on 22 February 2022.

The decision has been refiled to correct the information at paragraph [75] by deleting the words '10 April 2022' and inserting '11 April 2022' at items 3 and 6.

The amendments are administrative in nature and to do not affect the content of the decision originally issued.

Modern Awards, Economics and Research Section

On behalf of the Associate to President Ross

Dated 17 March 2022



# STATEMENT

*Fair Work Act 2009*

s.156—4 yearly review of modern awards

## **Part-day public holidays**

(AM2014/301 and AM2019/17)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER BISSETT

MELBOURNE, 22 FEBRUARY 2022

*4 yearly review of modern awards – finalisation of Exposure Drafts and variation determinations – Part-day public holidays.*

## **Background**

[1] This statement deals with the review of the part-day public holiday schedules that are contained in 112 of the 121 modern awards of general application. There are 5 different versions of the schedule found in these modern awards.

[2] During the course of the 4 yearly review, the Public Holidays Full Bench (AM2014/301) varied the schedules to make them ongoing.<sup>1</sup> In a decision issued on 7 November 2018,<sup>2</sup> 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 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.’

[3] On 20 December 2019, the President issued a statement<sup>3</sup> transferring further review of the part-day public holiday schedules from the Public Holidays Full Bench to this Full Bench (AM2019/17). The statement also noted that Commissioner Hampton would convene a conference to discuss to finalisation of this matter.

[4] On 3 March 2020, Commissioner Hampton issued a statement<sup>4</sup> indicating that each of the 5 versions of the part-day public holiday schedule would be re-drafted in plain language. On 25

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<sup>1</sup> [\[2018\] FWCFB 6540](#).

<sup>2</sup> [\[2018\] FWCFB 6540](#).

<sup>3</sup> [\[2019\] FWC 8581](#).

<sup>4</sup> [\[2020\] FWC 1138](#).

September 2020, Commission Hampton published the re-drafted schedules with a statement<sup>5</sup> inviting parties to comment on the following issues:

### **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. 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?

**[5]** Submissions were received from:

- Australian Industry Group ([Ai Group](#))

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<sup>5</sup> [\[2020\] FWC 5110](#).

- Australian Manufacturing Workers' Union ([AMWU](#))
- Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia ([CEPU](#))
- CFMMEU – Construction and General Division ([CFMMEU](#))
- Housing Industry Association ([HIA](#))
- Local Government Associations ([LGA](#))
- National Electrical and Communications Association ([NECA](#))
- Pharmacy Guild of Australia ([PGA](#))

[6] Commissioner Hampton then convened a conference on 21 October 2020 to discuss the comments received. The [transcript](#) of that conference is available on the Commission's website. Following the conference, Commissioner Hampton published a Report<sup>6</sup>.

[7] The Report set out the outstanding issues to be resolved concerning the finalisation of the schedules. The Report also summarised the substance of the positions advanced by the parties and included observations from Commissioner Hampton to assist the consideration of the matter. The parties' suggested amendments to the draft schedules were included in Attachment B to the Report.

### **Issues generally agreed at the conference**

[8] In the submissions and at the conference, there appeared to be general agreement about the resolution of the substantive and structural issues and a number of the drafting issues.

#### *Scope of the part-day public holiday schedules*

[9] The part-day public holiday schedules are currently confined 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). The plain language re-draft proposed extending the application as follows:

'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).'

[10] In his Report, Commissioner Hampton noted that:

'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.'<sup>7</sup>

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<sup>6</sup> [2020] FWC 5609.

<sup>7</sup> Report to the Full Bench dated 13 November 2020, [28]

[11] This position is supported by Ai Group,<sup>8</sup> HIA,<sup>9</sup> AMWU,<sup>10</sup> CFMMEU,<sup>11</sup> CEPU,<sup>12</sup> LGA.<sup>13</sup>

[12] In their written submissions, NECA appeared to oppose the extension of the part-day public holidays schedules to include all part-day public holidays in relation to the *Electrical, Electronic and Communications Contracting Award*.<sup>14</sup> However, at the conference, they clarified that they opposed the extension of the schedules to include entitlements that are not currently available under the NES.<sup>15</sup>

[13] Ai Group raised an additional concern about the use of the words ‘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’ in proposed cl.A.1 and submits:

‘A crucial distinction arises between the definitions of a part-day public holiday under the proposed schedules and the Act. Whereas the FW Act limits public holidays (other than those listed under s. 115(1)(a)) to those declared or prescribed under a law of a State or Territory to be observed generally within the State or Territory or a region thereof, the proposed schedules imply that a public holiday may include one which is prescribed by a law of a region of the State or Territory (e.g. a Local Government law). This goes beyond the definition of a public holiday in the NES which does not contemplate public holidays that are declared under a law of a region of a State or Territory.’<sup>16</sup>

[14] In his Report, Commissioner Hampton notes:

‘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.’<sup>17</sup>

[15] Commissioner Hampton proposes 2 alternative re-drafting options to resolve this issue as follows:

Option 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.

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<sup>8</sup> Ai Group submission dated 16 October 2020, [4].

<sup>9</sup> HIA submission dated 19 October 2020, p.1.

<sup>10</sup> AMWU submission dated 20 October 2020, [5].

<sup>11</sup> CFMMEU submission dated 16 October 2020, 3.1

<sup>12</sup> CEPU submission dated 16 October 2020, [5].

<sup>13</sup> LGA submission dated 16 October 2020, [6].

<sup>14</sup> NECA submission dated 16 October 2020

<sup>15</sup> Transcript, PN 28.

<sup>16</sup> Ai Group submission dated 16 October 2020, [11].

<sup>17</sup> Report to the Full Bench dated 13 November 2020, [29].

Option 2: 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).

[16] It seems to us that option 2 above resolves the drafting issue raised by Ai Group and it is our *provisional* view that cl.A.1 should be varied accordingly. This amendment is marked up in the revised draft schedules attached to this statement (**Attachment A**).

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

[17] There are currently 5 different versions of the part-day public holiday schedules. In his Report, Commissioner Hampton noted:

‘[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.’<sup>18</sup>

[18] The AMWU<sup>19</sup>, CFMMEU<sup>20</sup> and Ai Group<sup>21</sup> agree that different versions of the schedule should be maintained based on whether an Award provides for an annualised salary.

[19] The LGA accepts that version 2 of the schedule is suitable for the *Local Government Industry Award 2020* which contains an annualised salary.<sup>22</sup>

[20] It is our *provisional* view that versions 1 to 3 of the schedules should be varied as suggested by Commissioner Hampton and the relevant parties, that is:

- The plain language re-drafted version 1 of the schedule should be inserted into each of the relevant modern awards that do not contain an annualised wage arrangements provision.
- The plain language redrafted version 2 of the schedule should be inserted into each of relevant modern awards that do contain annualised wage arrangements provisions. – generally, those currently utilising versions 2 and 3 provided they have the relevant provision.

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<sup>18</sup> Report to the Full Bench dated 13 November 2020, [33].

<sup>19</sup> AMWU submission dated 20 October 2020, [6].

<sup>20</sup> CFMMEU submission dated 16 October 2020, 3.2.

<sup>21</sup> Ai Group submission dated 16 October 2020, [16]-[21].

<sup>22</sup> LGA submission dated 16 October 2020, [7].

- Version 3 is no longer necessary.

[21] Updated versions 1 and 2 of the schedules with lists of the relevant awards are attached to this statement (at **Attachment A**).

[22] In relation to versions 4 and 5 of the schedule, Ai Group submits that these should be retained with some minor drafting variations. The proposed drafting variations to the schedule in the *Fast Food Award 2010* (Fast Food Award) are:

- To remove cl.A.2.6 which deals with employees being paid an annualised salary. This is because the Fast Food award does not include an annualised salary provision.
- Amending cl.A.2.3 as follows:

~~‘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’

[23] It is our *provisional* view that cl. A.2.6 of the Fast Food schedule should be deleted and cl.A.2.3 should be varied as suggested by Ai Group to ensure that the schedule only includes terms that are relevant to the award. A marked up version of the schedule is attached to this statement (**Attachment A**).

[24] We note that both the Fast Food and *Timber Industry Award 2020* (Timber Award) schedules do not include cl.A.2.7 which is included in versions 1 and 2. Clause A.2.7 is set out below:

‘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.’

[25] Ai Group opposes the inclusion of A.2.7 in both of these schedules.

[26] Clause A.2.7, which was previously paragraph (g), was dropped from the Fast Food Award schedule during a conference on 19 December 2012 after the following exchange:

PN322 MR BLAIRS: Your Honour, the Fast Food Industry Award essentially has a very short public holiday clause which primarily just defers to the NES. The NES doesn't have anything that would suggest that there would be an alternative - another day, another day's pay or another day's annual leave - in there, so I suppose in that respect -  
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...

MR CAIRNEY: I understand what Mr Blairs says. It's a matter of whether there's any reference into the rostered day off clause about an employee being entitled to another day off or another day's pay or another day of annual leave. Obviously I don't have the award in front of me to - - -

...

PN351 MR BLAIRS: My understanding is we do have a consent position in relation to the Fast Food Award, so maybe we can just tick that one off, quite simply.

PN352 JUSTICE ROSS: Certainly. Is that to delete paragraph (g) or is there some other  
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PN353 MR BLAIRS: To delete paragraph (g), that's correct.

PN354 JUSTICE ROSS: Is that agreed with Business SA as well?

PN355 MR CARNEY: Yes, your Honour<sup>23</sup>

[27] As noted above, the Timber Award includes discrete provisions applying to employees whose ordinary pattern of work involves rostered shifts which include the part-day public holiday hours and the award does not include cl.A.2.7. Interested parties are invited to file submissions about whether cl.A.2.7 should be inserted into the Fast Food Award or the Timber Award.

[28] We note that we have identified a cross-referencing error in the Timber Award schedule. This error will be corrected as follows:

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~~ 33.3 or 33.4 on a pro-rata basis for the number of ordinary hours on the part-day public holiday;

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~~ 33.3 or 33.4.

*Note and references to personal/carers' leave*

[29] As part of the plain language re-drafting of the schedule the following note was included at the start of each version:

'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.'

[30] Clauses A.2.4 and A.2.6 (A.2.7 in versions 2 and 3) were also re-drafted to include a reference to personal/carers' leave in addition to annual leave as follows:

'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

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<sup>23</sup> [Transcript](#), 19 December 2012



during those hours and must be paid at the rate of pay applicable to their ordinary hours during that time;

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.'

[31] Commissioner Hampton noted in his report that:

'[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.'

[32] No party opposed the addition of the note or inclusion of personal/carers leave in the schedule.

*Reference to public holiday penalty rates*

[33] The current part-day public holiday schedules each include a provision relating to the payment of a public holiday penalty rate as follows:

'(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.'

[34] The words 'if any' have been removed in the plain language re-draft of the clause:

'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;'

[35] Ai Group submits that:

'The re-drafted version of this provision (proposed clause A.2.3) does not account for the possibility that an award which contains the schedule will not provide for a public holiday penalty rate. For example, no penalty rate applies under the Air Pilots Award 2020 or for journalists and employees in cinemas engaged under the Broadcasting, Recorded Entertainment and Cinemas Award 2010 where work is undertaken on a public holiday.'<sup>24</sup>

[36] Ai Group proposes the following amendment to cl.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'

[37] It is our *provisional* view that the amendment proposed by Ai Group will resolve the issue. This amendment has been marked up in the attached versions of the schedule (**Attachment A**).

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<sup>24</sup> Ai Group submission dated 16 October 2020, [48].

## Outstanding issues

### *Accrued day off*

[38] The current versions of the schedule include the following clause:

‘(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.’

[39] This clause has been redrafted in the plain language versions to include an ‘accrued day off’ in addition to a ‘rostered day off’ as follows:

‘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;’

[40] Ai Group submits that the redrafted provision would be ‘inconsistent with existing clauses which do not allow for accrued days off to coincide with a public holiday, or which provide other entitlements where an accrued day off falls on a public holiday’.<sup>25</sup> Ai Group’s submission includes a number of examples from awards where this inconsistency arises.<sup>26</sup>

[41] The CFMMEU does not support the inclusion of the words ‘accrued day off’ where that term is not used in an award.<sup>27</sup>

[42] The LGA submits that the inclusion of the words ‘accrued day off’ is inconsistent with the Local Government Award. We deal later with their proposed award specific amendments.

[43] Commissioner Hampton noted the following in his report:

‘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.’<sup>28</sup>

[44] HIA submits that this issue may require award by award consideration.<sup>29</sup> We think that there is some merit in the HIA’s submission. Commission staff have undertaken some analysis

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<sup>25</sup> Ai Group submission dated 16 October 2020, [43].

<sup>26</sup> These include: *Hospitality Industry (General) Award 2020*, *Ambulance and Patient Transport Industry Award 2020*, *Labour Market Assistance Industry Award 2020*, *Nurses Award 2010*, *Broadcasting, Recorded Entertainment and Cinemas Award 2020*, *Aged Care Award 2020*

<sup>27</sup> CFMMEU submission dated 16 October 2020, 4.2.

<sup>28</sup> Report to the Full Bench dated 13 November 2020, [35].

<sup>29</sup> HIA submission dated 19 October 2020, p.2

of the rostered or accrued day off provisions in modern awards. **Attachment B** to this statement includes a table that sets out:

- Awards that do not include rostered day off provisions
- Awards that include rostered day off provisions, and
- Awards that include accrued day off provisions.

[45] Interested parties are invited to identify any issues that may require award specific consideration in relation to cl.A.2.5.

*Minimum payment provisions*

[46] The CFMMEU proposes a number of drafting changes to the schedule for the *Building and Construction General On-site Award* including the following amendment to clause A.2.3:

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;

[47] At the conference the Ai Group opposed the CFMMEU's suggested redraft and submitted that it raises a more substantive issue about the interaction of the schedules with minimum periods of payment in awards.<sup>30</sup> Ai Group went on to note that the issue had been identified as a source of ambiguity in the 2012 proceedings when the schedules were first inserted in modern awards.

[48] In response to the Ai Group's concerns, the AHA submitted that a similar issue had arisen in the review of the Hospitality Award. The Full Bench in that matter decided to vary the minimum payment provisions for public holidays and set out the following reasons:

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.

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

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<sup>30</sup> Transcript, PN90-93

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

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.<sup>31</sup>

**[49]** The clause inserted into the Hospitality Award is set out below:

#### 29.4 Additional provisions for work on public holidays

(c) Hours of work performed on the day immediately before a public holiday, or immediately after a public holiday, that form part of one continuous shift, are counted as part the minimum hours worked for the purposes of this clause.

**[50]** The CFMMEU submitted that it would not be opposed to a modified form of cl.29.4(c) of the Hospitality Award being included in the schedule but with the reference to the part-day public holiday.<sup>32</sup>

**[51]** Commissioner Hampton’s Report noted that 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.

**[52]** We note that the parties have not had the opportunity to provide submissions in relation to this issue. Interested parties are invited to comment on whether a provision similar to cl.29.4(c) of the Hospitality Award would resolve any ambiguity in relation to the interaction between the minimum payment periods in modern awards and the schedules. Such a variation would be in the following terms:

Hours of work performed immediately before or after a part-day public holiday, that form part of one continuous shift, are counted as part the minimum payment/engagement period (if any) in this award.

#### *Ordinary rate of pay*

**[53]** The PGA submits that the use of the words ‘ordinary rate of pay’ has ‘caused uncertainty and confusion for employers interpreting rates of pay’<sup>33</sup> and that:

‘The term ‘ordinary rate of pay for such hours’ appears to be in conflict with the terminology contained at s116 of the Fair Work Act 2009 where the description used regarding public holiday payment is ‘base rate of pay for the employee’s ordinary hours of work’.’

**[54]** Section 116 of the Act is set out below:

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<sup>31</sup> [2018] FWCFB 7263 [68]-[70]

<sup>32</sup> Transcript PN125.

<sup>33</sup> PGA submission dated 16 October 2020, [6].

## 116 Payment for absence on public holiday

If, in accordance with this Division, an employee is absent from his or her employment on a day or part-day that is a public holiday, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work on the day or part-day.

Note: If the employee does not have ordinary hours of work on the public holiday, the employee is not entitled to payment under this section. For example, the employee is not entitled to payment if the employee is a casual employee who is not rostered on for the public holiday, or is a part-time employee whose part-time hours do not include the day of the week on which the public holiday occurs.

[55] 'Base rate of pay' is defined at s.16 of the Act as follows:

### 16 Meaning of base rate of pay

#### *General meaning*

(1) The base rate of pay of a national system employee is the rate of pay payable to the employee for his or her ordinary hours of work, but not including any of the following:

- (a) incentive-based payments and bonuses;
- (b) loadings;
- (c) monetary allowances;
- (d) overtime or penalty rates;
- (e) any other separately identifiable amounts.

[56] The PGA submits that the words 'ordinary rate of pay' in cll.A.2.2, A.2.4 and A.2.5 should be replaced with 'minimum hourly rate' as this is a term which is recognised by workplace participants. Clause A.2.2 with the suggested changes is set out below:

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;

[57] Ai Group submits that in order to ensure consistency with full day public holidays and s.116 of the Act these clauses should refer to the 'rate applicable under the NES'.<sup>34</sup> The suggestion was opposed by the PGA.<sup>35</sup>

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<sup>34</sup> Transcript, PN114.

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[58] It is our *provisional* view that the relevant clauses be amended in the manner proposed by Ai Group as Ai Group's position is more consistent with the public holiday provisions in most awards which simply provide 'Public holidays are provided for in the NES'. This amendment has been marked up in the attached versions of the schedule (**Attachment A**).

*Full-day entitlements in certain public holiday provisions*

[59] Ai Group submits that there is an issue with the interaction between clauses in a number of modern awards which provide for an employee to be compensated with full-day entitlements where an employee's ordinary hours of work are structured to include a day off and such day off falls on a public holiday. The current part-day public holiday schedules should be amended to avoid employees receiving entitlements which compensate them for hours which would not have been worked on the part-day public holiday. The *Manufacturing and Associated Industries and Occupations Award 2020* is cited as an example of this:

**40.5 Rostered day off falling on public holiday**

(a) Except as provided for in clauses 40.5(b) and (c) and except where the rostered day off falls on a Saturday or a Sunday, where a full-time employee's ordinary hours of work are structured to include a day off and such day off falls on a public holiday, the employee is entitled, at the discretion of the employer, to either:

(i) 7.6 hours of pay at the ordinary hourly rate; or

(ii) 7.6 hours of extra annual leave; or

(iii) a substitute day off on an alternative week day.

(b) Where an employee has credited time accumulated pursuant to clause 27.5, then such credited time should not be taken as a day off on a public holiday.

(c) If an employee is rostered to take credited time accumulated pursuant to clause 27.5 as a day off on a week day and such week day is prescribed as a public holiday after the employee was given notice of the day off, then the employer must allow the employee to take the time off on an alternative week day.

(d) Clauses 40.5(b) and (c) do not apply in relation to days off which are specified in an employee's regular roster or pattern of ordinary hours as clause 40.5(a) applies to such days off.

[60] The other awards identified by the Ai Group as falling in this category are:

- *Food, Beverage and Tobacco Manufacturing Award 2020 cl.30.5(a)*
- *Textile, Clothing, Footwear and Associated Industries Award 2020 cl. 37.6*
- *Seafood Processing Award 2020 cl. 26.4.*

[61] Ai Group notes that this issue was amongst those originally intended to be dealt with by the part-day public holiday schedule. This was identified in Commissioner Hampton's Report to the Full Bench in the context of the 2012 Review.<sup>36</sup>

[62] Ai Group submits that a similar issue was considered and dealt with in the Timber Award and was resolved by inserting a pro rata entitlement into the Timber Award schedule at cl.A.2.6:

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;

[63] It is our *provisional* view that this issue could be resolved in each of the 4 awards identified by Ai Group in a similar way to the Timber Award clause. For example, a new cl.A.2.8 would be inserted into the Manufacturing Award schedule as follows:

A.2.8 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 40.5 but they are not rostered to work on the part-day public holiday, then they are entitled to the benefit of clause 40.5 on a pro-rata basis for the number of ordinary hours on the part-day public holiday.

[64] Marked up schedules for each of the 4 awards identified above are attached to this statement (**Attachment A**). Interested parties are invited to comment on our *provisional* view and the proposed drafting in accordance with the timetable below. Interested parties are also invited to identify any other awards which include a similar issue.

#### *Award specific issues*

[65] The CFMMEU submits that it is concerned that the versions of the schedules as drafted do not cater for the specific employment arrangements for some awards. For example, the CFMMEU submits that version 1 which is to apply to the *Building and Construction General On-site Award 2020* makes no mention of daily hire which is the predominant form of employment under that award.<sup>37</sup> It raises 3 additional issues:

- It is submitted that there is some ambiguity in the wording of the schedules in that they do not limit the entitlement to the specific period of the public holiday (i.e. do penalty rates apply to any hours worked on the day or just the hours specified in the part-day public holiday)
- there is no reference to half-day public holidays (which is a term used for some public holidays in NSW)
- a question about the accrual of RDOs on part-day public holidays.

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<sup>36</sup> Report to the Full Bench [\[2012\] FWA 10496 at \[28\]](#).

<sup>37</sup> CFMMEU submission dated 16 October 2020, 5.

[66] Both the Ai Group<sup>38</sup> and HIA<sup>39</sup> expressed a view that the 3 additional changes proposed by the CFMMEU are unnecessary.

[67] At the conference, Ai Group suggested that the parties, specifically the CFMMEU, HIA, MBA and Ai Group might benefit from an opportunity to have some further discussions on the ‘daily hire’ point.<sup>40</sup> Parties are asked to report back on these discussions and whether a joint position has been reached.

[68] The LGA also made an award specific submission in relation to the *Local Government Industry Award 2020*. LGA submits that the wording in clause A.2.5 is inconsistent with the public holiday provisions in the award.<sup>41</sup> LGA submits:

‘10. With respect to public holidays in the Award the language of ‘rostered day off’ and ‘accrued rostered day off’ are used to provide public holiday benefits in specific situations, namely:

(b) Award clause 28.5 – Only employees who are working a 7 day rotating roster system, and who are rostered off on a public holiday, still get paid for the public holiday; and

(c) Award clause 28.6 – If a public holiday falls on an employee’s accrued rostered day off, the next working day will be substituted.

11. These arrangements reflect the fact that employees working a 7 day rotating roster system or an accrued rostered day off system would ‘miss out’ on the benefit of public holidays due to the irregular arrangement of their working hours.’

[69] LGA submits that clause A.2.5 of the Schedule for the Local Government Award should be amended as follows:

‘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;’

[70] Ai Group supports the LGA submission that a tailored clause might be necessary for this award, however, they note that the proposal might conflict with cl.28.6 of the award.<sup>42</sup>

[71] Parties are asked to consider the issue raised by Ai Group and make submissions about any amendments which may be necessary to the wording proposed by LGA.

#### *Additional issue*

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<sup>38</sup> Transcript PN88-89.

<sup>39</sup> Transcript PN78.

<sup>40</sup> Transcript PN87.

<sup>41</sup> LGA submission dated 16 October 2020, [9]

<sup>42</sup> Transcript, PN 102-103.



[72] As we have previously mentioned, 112 of the 121 modern awards of general application currently contain a part-day public holiday schedule. The following awards do not contain a schedule:

- *Alpine Resorts Award 2020*
- *Aluminium Industry Award 2020*
- *Black Coal Mining Industry Award 2020*
- *Coal Exports Terminal Award 2020*
- *Cotton Ginning Award 2020*
- *Port Authorities Award 2020*
- *Professional Employees Award 2020*
- *Rail Industry Award 2020*
- *Sugar Industry Award 2020*

[73] These awards were not specifically dealt with in the 2012 decision inserting the schedule into the other 112 awards.<sup>43</sup> However, a number of them were discussed at a conference and the following awards were excluded because they were said to not operate in South Australia, which was the only state with part-day public holidays at the time:

- *Aluminium Industry Award 2020*
- *Alpine Resorts Award 2020*
- *Black Coal Mining Industry Award 2020*
- *Coal Exports Terminal Award 2020*
- *Sugar Industry Award 2020*<sup>44</sup>

[74] Parties are asked to consider whether a part-day public holiday schedule should be included in any of these awards given the scope of part-day public holidays now being addressed by these schedules.

### Next steps

[75] We make the following directions in respect of the conclusion of this matter:

1. Interested parties are invited to provide a response to our *provisional* views at [16], [20], [23], [37], [58], and [63] by **Monday 21 March 2022**.
2. Interested parties are invited to provide a response to the issues set out at [27], [45], [52], [64], [71] and [74] by **Monday 21 March 2022**.
3. Submissions in reply are to be provided by **Monday 11 April 2022**.
4. Ai Group, the CFMMEU, HIA and MBA are directed to provide a report back on the progress of discussions about the proposed amendments to the Building Award (see [67]) by **Monday 21 March 2022**.

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<sup>43</sup> [2012] FWAFB 10738

<sup>44</sup> [Transcript, 19 December 2012 PN683](#)

5. All submissions are to be sent to [amod@fwc.gov.au](mailto:amod@fwc.gov.au) and will be published on the Commission's website.
6. Any party wishing to request an oral hearing is to advise [chambers.ross.j@fwc.gov.au](mailto:chambers.ross.j@fwc.gov.au) by **Monday 11 April 2022**. Absent such a request, the matter will be determined on the basis of the Report and submissions received.
7. The parties are granted liberty to apply to vary the above directions.

PRESIDENT

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## Version 1—Plain language re-drafted Part-day Public Holidays Schedule

Version 1 applies to awards that do not contain annualised wage arrangements, as listed below.

### 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 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 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 ~~under the NES to their ordinary hours during that time~~;
- 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;
- 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 ~~under the NES to their ordinary hours during that time~~;
- 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 ~~under the NES to their ordinary hours during that time~~;
- 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.

**VERSION 1—Part-day Public Holidays Schedule****Awards that do not contain annualised wage arrangements:**

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. *Airline Operations—Ground Staff Award 2020*
6. *Airport Employees Award 2020*
7. *Ambulance and Patient Transport Industry Award 2020*
8. *Amusement, Events and Recreation Award 2020*
9. *Animal Care and Veterinary Services Award 2020*
10. *Aquaculture Industry Award 2020*
11. *Asphalt Industry Award 2020*
12. *Book Industry Award 2020*
13. *Building and Construction General On-site Award 2020*
14. *Business Equipment Award 2020*
15. *Car Parking Award 2020*
16. *Cement, Lime and Quarrying Award 2020*
17. *Cemetery Industry Award 2020*
18. *Children’s Services Award 2010*
19. *Cleaning Services Award 2020*
20. *Commercial Sales Award 2020*
21. *Concrete Products Award 2021*
22. *Corrections and Detention (Private Sector) Award 2020*
23. *Dredging Industry Award 2020*
24. *Dry Cleaning and Laundry Industry Award 2020*
25. *Educational Services (Schools) General Staff Award 2020*
26. *Educational Services (Teachers) Award 2020*
27. *Electrical Power Industry Award 2020*
28. *Electrical, Electronic and Communications Contracting Award 2020*
29. *Fire Fighting Industry Award 2020*
30. *Fitness Industry Award 2020*
31. *Funeral Industry Award 2020*
32. *Gardening and Landscaping Services Award 2020*
33. *Gas Industry Award 2020*
34. *General Retail Industry Award 2020*
35. *Graphic Arts, Printing and Publishing Award 2020*
36. *Hair and Beauty Industry Award 2010*
37. *Health Professionals and Support Services Award 2020*
38. *Higher Education Industry—Academic Staff—Award 2020*
39. *Higher Education Industry—General Staff—Award 2020*
40. *Horse and Greyhound Training Award 2020*
41. *Hydrocarbons Field Geologists Award 2020*
42. *Joinery and Building Trades Award 2020*
43. *Journalists Published Media Award 2020*
44. *Labour Market Assistance Industry Award 2020*
45. *Live Performance Award 2020*
46. *Mannequins and Models Award 2020*

47. *Marine Tourism and Charter Vessels Award 2020*
48. *Maritime Offshore Oil and Gas Award 2020*
49. *Market and Social Research Award 2020*
50. *Meat Industry Award 2020*
51. *Medical Practitioners Award 2020*
52. *Miscellaneous Award 2020*
53. *Mobile Crane Hiring Award 2020*
54. *Nursery Award 2020*
55. *Nurses Award 2020*
56. *Passenger Vehicle Transportation Award 2020*
57. *Pest Control Industry Award 2020*
58. *Pharmaceutical Industry Award 2020*
59. *Plumbing and Fire Sprinklers Award 2020*
60. *Ports, Harbours and Enclosed Water Vessels Award 2020*
61. *Poultry Processing Award 2020*
62. *Premixed Concrete Award 2020*
63. *Professional Diving Industry (Industrial) Award 2020*
64. *Professional Diving Industry (Recreational) Award 2020*
65. *Racing Clubs Events Award 2020*
66. *Racing Industry Ground Maintenance Award 2020*
67. *Registered and Licensed Clubs Award 2020*
68. *Road Transport (Long Distance Operations) Award 2020*
69. *Road Transport and Distribution Award 2020*
70. *Seagoing Industry Award 2020*
71. *Security Services Industry Award 2020*
72. *Silviculture Award 2020*
73. *Social, Community, Home Care and Disability Services Industry Award 2010*
74. *Sporting Organisations Award 2020*
75. *Stevedoring Industry Award 2020*
76. *Storage Services and Wholesale Award 2020*
77. *Supported Employment Services Award 2020*
78. *Surveying Award 2020*
79. *Transport (Cash in Transit) Award 2020*
80. *Travelling Shows Award 2020*
81. *Vehicle Repair, Services and Retail Award 2020*
82. *Waste Management Award 2020*
83. *Wine Industry Award 2020*

## Version 2—Plain language re-drafted Part-day Public Holidays Schedule

Version 2 contains tailored provisions (clauses A.2.3 and A.2.6) and applies to awards that contain annualised wage arrangement, as listed below.

### 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 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 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 ~~under the NES to their ordinary hours during that time~~;
- 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 (~~if any~~) in this award applicable to the hours worked;
- 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 ~~under the NES to their ordinary hours during that time~~;
- 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 ~~under the NES to their ordinary hours during that time~~;
- 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;
- 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.

**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.

## **VERSION 2—Part-day Public Holidays Schedule**

**(a) Awards that contain the Part-day Public Holiday Schedule and contain annualised wage arrangement provisions:**

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

\* 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. Annualised wage arrangements in [certain awards](#) are yet to be determined.

**(b) Awards that contain the Part-day Public Holiday Schedule and 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—Plain language re-drafted Part-day Public Holidays Schedule

Version 3 (previously Version 4) applies to the *Fast Food Industry Award 2010* only and does not include the provision in other versions (clause A.2.6 in Version 1 and clause A.2.7 in version 2) relating to employees not rostered to work at the time of the part-day public holiday.

#### 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 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 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 ~~under the NES to their ordinary hours during that time~~;
- 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 (if any) in this award applicable to the hours worked;
- 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 ~~under the NES to their ordinary hours during that time~~;
- 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 ~~under the NES to their ordinary hours during that time~~;
- ~~**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.~~
- 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.

## Version 4—Plain language re-drafted Part-day Public Holidays Schedule

Version 4 (previously Version 5) applies to the *Timber Industry Award 2020* only and:

- includes provisions (clauses 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 (clause A.2.6 in Version 1 and clause A.2.7 in version 2) relating to employees not rostered to work at the time of the part-day public holiday.

### 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 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 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 ~~under the NES to their ordinary hours during that time~~;
- 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;
- 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 ~~under the NES to their ordinary hours during that time~~;
- 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 ~~under the NES to their ordinary hours during that time~~;
- 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 33.3 or 33.4 but they are not rostered to work on the part-day public holiday, then they are entitled to the benefit of clause 33.3 or 33.4 on a pro-rata basis for the number of ordinary hours on the part-day public holiday;

- 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 33.3 or 33.4.
- 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.

## Version 5—Plain language re-drafted Part-day Public Holidays Schedule

Version 5 applies to the *Manufacturing and Associated Industries and Occupations Award 2020* only (previously covered by Version 2) and includes a provision (clause A.2.8) applying to employees whose ordinary pattern of work involves rostered shifts which include the part-day public holiday hours.

### 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 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 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 ~~under the NES to their ordinary hours during that time~~;
  - 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 ~~(if any)~~ in this award applicable to the hours worked;
  - 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 ~~under the NES to their ordinary hours during that time~~;
  - 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 ~~under the NES to their ordinary hours during that time~~;
  - 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;
  - 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;

**A.2.8** 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 40.5 but they are not rostered to work on the part-day public holiday, then they are entitled to the benefit of clause 40.5 on a pro-rata basis for the number of ordinary hours on 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.

## Version 6—Plain language re-drafted Part-day Public Holidays Schedule

Version 6 applies to the *Food, Beverage and Tobacco Manufacturing Award 2020* only (previously covered by Version 1) only and includes a provision (clause A.2.7) applying to employees whose ordinary pattern of work involves rostered shifts which include the part-day public holiday hours.

### 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 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 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 ~~under the NES to their ordinary hours during that time~~;
  - 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;
  - 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 ~~under the NES to their ordinary hours during that time~~;
  - 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 ~~under the NES to their ordinary hours during that time~~;
  - 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.2.7 ~~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 30.5 but they~~

are not rostered to work on the part-day public holiday, then they are entitled to the benefit of clause 30.5 on a pro-rata basis for the number of ordinary hours on 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.

## Version 7—Plain language re-drafted Part-day Public Holidays Schedule

Version 7 applies to the *Textile, Clothing, Footwear and Associated Industries Award 2020* only (previously covered by Version 1) and includes a provision (clause A.2.7) applying to employees whose ordinary pattern of work involves rostered shifts which include the part-day public holiday hours.

### 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 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 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 ~~under the NES to their ordinary hours during that time~~;
  - 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;
  - 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 ~~under the NES to their ordinary hours during that time~~;
  - 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 ~~under the NES to their ordinary hours during that time~~;
  - 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.2.7 ~~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 37.6 or clause 37.7 but they are not rostered to work on the part-day public holiday, then they are~~



entitled to the benefit of clause 37.6 or clause 37.7 on a pro-rata basis for the number of ordinary hours on 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.

## Version 8—Plain language re-drafted Part-day Public Holidays Schedule

Version 8 applies to the *Seafood Processing Award 2020* only (previously covered by Version 1) and includes a provision (clause A.2.7) applying to employees whose ordinary pattern of work involves rostered shifts which include the part-day public holiday hours.

### 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 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 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 ~~under the NES to their ordinary hours during that time~~;
- 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;
- 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 ~~under the NES to their ordinary hours during that time~~;
- 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, then they are taken to be on a public holiday for those hours and must be paid at the rate of pay applicable ~~under the NES to their ordinary hours during that time~~;
- 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.2.7** ~~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 26.4 but they are not rostered to work on the part-day public holiday, then they are entitled to the benefit of clause 26.4 on a pro-rata basis for the number of ordinary hours on 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

## Attachment B

	<b>Current awards</b>	<b>Rostered Day Off</b>	<b>Accrued Day Off</b>	<b>Not specified</b>
1.	<u>Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020 [MA000115]</u>			☐
2.	<u>Aged Care Award 2010 [MA000018]</u>		☐	
3.	<u>Air Pilots Award 2020 [MA000046]</u>		☐	
4.	<u>Aircraft Cabin Crew Award 2020 [MA000047]</u>			☐
5.	<u>Airline Operations-Ground Staff Award 2020 [MA000048]</u>	☐		
6.	<u>Airport Employees Award 2020 [MA000049]</u>	☐		
7.	<u>Alpine Resorts Award 2020 [MA000092]</u>	☐		
8.	<u>Aluminium Industry Award 2020 [MA000060]</u>			☐
9.	<u>Ambulance and Patient Transport Industry Award 2020 [MA000098]</u>		☐	
10.	<u>Amusement, Events and Recreation Award 2020 [MA000080]</u>			☐
11.	<u>Animal Care and Veterinary Services Award 2020 [MA000118]</u>			☐
12.	<u>Aquaculture Industry Award 2020 [MA000114]</u>	☐		
13.	<u>Architects Award 2020 [MA000079]</u>			☐
14.	<u>Asphalt Industry Award 2020 [MA000054]</u>	☐		
15.	<u>Banking, Finance and Insurance Award 2020 [MA000019]</u>	☐		
16.	<u>Black Coal Mining Industry Award 2020 [MA000001]</u>	☐		
17.	<u>Book Industry Award 2020 [MA000078]</u>	☐		
18.	<u>Broadcasting, Recorded Entertainment and Cinemas Award 2020 [MA000091]</u>		☐	
19.	<u>Building and Construction General On-site Award 2020 [MA000020]</u>	☐		
20.	<u>Business Equipment Award 2020 [MA000021]</u>			☐
21.	<u>Car Parking Award 2020 [MA000095]</u>			☐
22.	<u>Cement, Lime and Quarrying Award 2020 [MA000055]</u>	☐		
23.	<u>Cemetery Industry Award 2020 [MA000070]</u>	☐		
24.	<u>Children's Services Award 2020 [MA000120]</u>	☐		
25.	<u>Cleaning Services Award 2020 [MA000022]</u>	☐		
26.	<u>Clerks—Private Sector Award 2020 [MA000002]</u>	☐		
27.	<u>Coal Export Terminals Award 2020 [MA000045]</u>			☐
28.	<u>Commercial Sales Award 2020 [MA000083]</u>			☐
29.	<u>Concrete Products Award 2020 [MA000056]</u>	☐		
30.	<u>Contract Call Centres Award 2020 [MA000023]</u>	☐		

31.	<u>Corrections and Detention (Private Sector) Award 2020 [MA000110]</u>			၂
32.	<u>Cotton Ginning Award 2020 [MA000024]</u>	၂		
33.	<u>Dredging Industry Award 2020 [MA000085]</u>			၂
34.	<u>Dry Cleaning and Laundry Industry Award 2020 [MA000096]</u>	၂		
35.	<u>Educational Services (Post-Secondary Education) Award 2020 [MA000075]</u>	၂		
36.	<u>Educational Services (Schools) General Staff Award 2020 [MA000076]</u>	၂		
37.	<u>Educational Services (Teachers) Award 2020 [MA000077]</u>	၂		
38.	<u>Electrical Power Industry Award 2020 [MA000088]</u>	၂		
39.	<u>Electrical, Electronic and Communications Contracting Award 2020 [MA000025]</u>	၂		
40.	<u>Fast Food Industry Award 2020 [MA000003]</u>			၂
41.	<u>Fire Fighting Industry Award 2020 [MA000111]</u>	၂		
42.	<u>Fitness Industry Award 2020 [MA000094]</u>	၂		
43.	<u>Food, Beverage and Tobacco Manufacturing Award 2020 [MA000073]</u>	၂		
44.	<u>Funeral Industry Award 2020 [MA000105]</u>	၂		
45.	<u>Gardening and Landscaping Services Award 2020 [MA000101]</u>	၂		
46.	<u>Gas Industry Award 2020 [MA000061]</u>			၂
47.	<u>General Retail Industry Award 2020 [MA000004]</u>	၂		
48.	<u>Graphic Arts, Printing and Publishing Award 2020 [MA000026]</u>	၂		
49.	<u>Hair and Beauty Industry Award 2020 [MA000005]</u>			၂
50.	<u>Health Professionals and Support Services Award 2020 [MA000027]</u>			၂
51.	<u>Higher Education Industry-Academic Staff-Award 2020 [MA000006]</u>			၂
52.	<u>Higher Education Industry-General Staff-Award 2020 [MA000007]</u>			၂
53.	<u>Horse and Greyhound Training Award 2020 [MA000008]</u>			၂
54.	<u>Horticulture Award 2020 [MA000028]</u>			၂
55.	<u>Hospitality Industry (General) Award 2020 [MA000009]</u>	၂	၂	
56.	<u>Hydrocarbons Fi+58:103eld Geologists Award 2020 [MA000064]</u>			၂
57.	<u>Hydrocarbons Industry (Upstream) Award 2020 [MA000062]</u>			၂

58.	<u>Joinery and Building Trades Award 2020 [MA000029]</u>	၂		
59.	<u>Journalists Published Media Award 2020 [MA000067]</u>	၂		
60.	<u>Labour Market Assistance Industry Award 2020 [MA000099]</u>	၂		
61.	<u>Legal Services Award 2020 [MA000116]</u>	၂		
62.	<u>Live Performance Award 2020 [MA000081]</u>	၂		
63.	<u>Local Government Industry Award 2020 [MA000112]</u>	၂	၂	
64.	<u>Mannequins and Models Award 2020 [MA000117]</u>			၂
65.	<u>Manufacturing and Associated Industries and Occupations Award 2020 [MA000010]</u>	၂		
66.	<u>Marine Tourism and Charter Vessels Award 2020 [MA000093]</u>			၂
67.	<u>Marine Towage Award 2020 [MA000050]</u>			၂
68.	<u>Maritime Offshore Oil and Gas Award 2020 [MA000086]</u>			၂
69.	<u>Market and Social Research Award 2020 [MA000030]</u>			၂
70.	<u>Meat Industry Award 2020 [MA000059]</u>	၂		
71.	<u>Medical Practitioners Award 2020 [MA000031]</u>			၂
72.	<u>Mining Industry Award 2020 [MA000011]</u>			၂
73.	<u>Miscellaneous Award 2020 [MA000104]</u>			၂
74.	<u>Mobile Crane Hiring Award 2020 [MA000032]</u>	၂		
75.	<u>Nursery Award 2020 [MA000033]</u>			၂
76.	<u>Nurses Award 2020 [MA000034]</u>	၂	၂	
77.	<u>Oil Refining and Manufacturing Award 2020 [MA000072]</u>			၂
78.	<u>Passenger Vehicle Transportation Award 2020 [MA000063]</u>	၂		
79.	<u>Pastoral Award 2020 [MA000035]</u>			၂
80.	<u>Pest Control Industry Award 2020 [MA000097]</u>	၂		
81.	<u>Pharmaceutical Industry Award 2020 [MA000069]</u>			၂
82.	<u>Pharmacy Industry Award 2020 [MA000012]</u>	၂		
83.	<u>Plumbing and Fire Sprinklers Award 2020 [MA000036]</u>	၂		
84.	<u>Port Authorities Award 2020 [MA000051]</u>	၂		
85.	<u>Ports, Harbours and Enclosed Water Vessels Award 2020 [MA000052]</u>	၂		
86.	<u>Poultry Processing Award 2020 [MA000074]</u>			၂
87.	<u>Premixed Concrete Award 2020 [MA000057]</u>	၂		
88.	<u>Professional Diving Industry (Industrial) Award 2020 [MA000108]</u>			၂
89.	<u>Professional Diving Industry (Recreational) Award 2020 [MA000109]</u>			၂
90.	<u>Professional Employees Award 2020 [MA000065]</u>			၂
91.	<u>Racing Clubs Events Award 2020 [MA000013]</u>			၂
92.	<u>Racing Industry Ground Maintenance Award 2020 [MA000014]</u>			၂

93.	<u>Rail Industry Award 2020 [MA000015]</u>			၂
94.	<u>Real Estate Industry Award 2020 [MA000106]</u>			၂
95.	<u>Registered and Licensed Clubs Award 2020 [MA000058]</u>	၂		
96.	<u>Restaurant Industry Award 2020 [MA000119]</u>			၂
97.	<u>Road Transport (Long Distance Operations) Award 2020 [MA000039]</u>	၂		
98.	<u>Road Transport and Distribution Award 2020 [MA000038]</u>	၂		
99.	<u>Salt Industry Award 2020 [MA000107]</u>			၂
100.	<u>Seafood Processing Award 2020 [MA000068]</u>	၂		
101.	<u>Seagoing Industry Award 2020 [MA000122]</u>			၂
102.	<u>Security Services Industry Award 2020 [MA000016]</u>	၂		
103.	<u>Silviculture Award 2020 [MA000040]</u>	၂		
104.	<u>Social, Community, Home Care and Disability Services Industry Award 2020 [MA000100]</u>			၂
105.	<u>Sporting Organisations Award 2020 [MA000082]</u>	၂	၂	
106.	<u>State Government Agencies Award 2020 [MA000121]</u>			၂
107.	<u>Stevedoring Industry Award 2020 [MA000053]</u>			၂
108.	<u>Storage Services and Wholesale Award 2020 [MA000084]</u>	၂		
109.	<u>Sugar Industry Award 2020 [MA000087]</u>	၂		
110.	<u>Supported Employment Services Award 2020 [MA000103]</u>			၂
111.	<u>Surveying Award 2020 [MA000066]</u>	၂		
112.	<u>Telecommunications Services Award 2020 [MA000041]</u>	၂		
113.	<u>Textile, Clothing, Footwear and Associated Industries Award 2020 [MA000017]</u>	၂		
114.	<u>Timber Industry Award 2020 [MA000071]</u>	၂		
115.	<u>Transport (Cash in Transit) Award 2020 [MA000042]</u>	၂		
116.	<u>Travelling Shows Award 2020 [MA000102]</u>			၂
117.	<u>Vehicle Manufacturing, Repair, Services and Retail Award 2020 [MA000089]</u>	၂		
118.	<u>Waste Management Award 2020 [MA000043]</u>	၂		
119.	<u>Water Industry Award 2020 [MA000113]</u>	၂		
120.	<u>Wine Industry Award 2020 [MA000090]</u>	၂		
121.	<u>Wool Storage, Sampling and Testing Award 2020 [MA000044]</u>			၂