



AMOD
Fair Work Commission

By email

26 February 2020

Dear Associate,

Journalists Published Media Award 2010 – January 2020 Exposure Draft

MEAA commented on an apparent drafting anomaly in an exposure draft of the Journalists Published Media Award (JPMA) 2010 on 19 April 2018. A copy of this letter is **attached**.

The anomaly concerns the interaction between the clauses governing annual leave and public holidays. In the latest January 2020 exposure draft, these are clauses 21 (annual leave) and 26 (public holidays).

These clauses relevantly provide:

JPMA Exposure Draft January 2020

21.1 *Annual leave is provided for in the NES.*

21.2 *Notwithstanding clause 21.1, employees required by their employer to work public holidays at ordinary hourly rates of pay who are:*

(a) engaged by a metropolitan daily newspaper, wire service, regional daily newspaper, suburban newspaper or a magazine, will be credited each year with an extra two weeks and three days' annual leave; or

(b) engaged by a country non-daily newspaper will be credited each year with an extra two weeks' annual leave,

instead of any penalty provisions as provided for in clause 26.2.

21.3 *Where an employee is credited an additional amount of annual leave in accordance with clause 21.2, if the employee is not required to work on a particular public holiday (apart from Good Friday and Christmas Day), the employer must notify the employee at least 14 days prior to the public holiday and that day will be deemed to be taken as an annual leave day.*

21.4 *Where an employee is credited an additional amount of annual leave in accordance with clause 21.2, should Christmas Day or Good Friday fall during the employee's annual leave, the employee will be allowed an extra day's annual leave or be paid double time rates for one day.*

21.5 Annual leave loading

An employee who is entitled to annual leave in accordance with this clause will, in respect of the period of such annual leave, be paid a loading of 17.5% of the base rate of pay prescribed in clause 14—Minimum wages.

📍 PO Box 723 Strawberry Hills NSW 2012 📞 1300 656 513

BUILT ON INTEGRITY. POWERED BY CREATIVITY. MEAA.ORG

Clause 26 of the JPMA Exposure Draft provides:

26. Public holidays

26.1 Public holidays are those specified in the NES

26.2 This clause, other than clause 26.3, does not apply to any employee receiving additional annual leave in accordance with clause 21.2.

26.3 Employees receiving additional annual leave

(a) Clauses 21.3, 21.4 and 26.2 do not apply to any employee receiving additional annual leave under clause 21.2(a).

(b) An employee receiving additional annual leave under clause 22.2(a) 21.2(a) is required to work on public holidays at ordinary rates of pay, unless directed to take a day of annual leave under clause 21.3.

(c) If an employee receiving additional annual leave in accordance with clause 21.2(a) is required to work on Good Friday or Christmas Day, the employee is entitled to an additional day off work in the fortnight in which that public holiday occurs. By agreement between an employee and employer, the additional day off may be banked and taken at a later time.

JPMA as in force

24. Annual leave

24.1 Annual leave is provided for in the NES.

24.2 Notwithstanding clause 24.1, employees required by their employer to work public holidays at ordinary hourly rates of pay who are:

(a) engaged by a metropolitan daily newspaper, wire service, regional daily newspaper, suburban newspaper or a magazine, will be credited each year with an extra two weeks and three days' annual leave; or

(b) engaged by a country non-daily newspaper will be credited each year with an extra two weeks' annual leave, instead of any penalty provisions as provided for in clause 27.4.

24.3 Where an employee is credited an additional amount of annual leave in accordance with clause 24.2, if the employee is not required to work on a particular public holiday (apart from Good Friday and Christmas Day), the employer must notify the employee at least 14 days prior to the public holiday and that day will be deemed to be taken as an annual leave day.

24.4 Where an employee is credited an additional amount of annual leave in accordance with clause 24.2, should Christmas Day or Good Friday fall during the employee's annual leave, the employee will be allowed an extra day's annual leave or be paid double time rates for one day.

24.5 Annual leave loading

An employee who is entitled to annual leave in accordance with this clause will, in respect of the period of such annual leave, be paid a loading of 17.5% of the base rate of pay prescribed in clause 14—Minimum wages.

24.6 Requirement to take annual leave notwithstanding terms of the NES

Notwithstanding the NES, if an employer has genuinely tried to reach agreement with an employee as to the timing of taking annual leave, the employer can require the employee to take annual leave by giving not less than eight weeks' notice of the time when such leave is to be taken.

27. Public holidays

27.1 *Public holidays are those specified in the NES*

27.2 *This clause, other than clause 27.3, does not apply to any employee receiving additional annual leave in accordance with clause 24.2.*

27.3 Employees receiving additional annual leave

(a) An employee receiving additional annual leave in accordance with clause 24.2 is required to work on public holidays at ordinary rates of pay, unless directed to take a day of annual leave in accordance with clause 24.2.

(b) If the employee is required to work on Good Friday or Christmas Day, they are entitled to an additional day off work in the fortnight in which that public holiday occurs. An employee and employer may agree to bank that additional day off to be taken at a later time.

27.4 *An employee required to work on a public holiday or a substitute day, as provided for in the NES or clause 27.5, will be provided with a day off instead or, if such a day off is not provided, paid double time and a half with a minimum payment of four hours.*

MEAA Comment

When comparing the clauses in the JPMA ED to those in the award as in force, it can be seen that clause 26.3 of the ED would, if implemented, have the effect of removing access by award-covered employees (who work public holidays at ordinary rates of pay) to:

Clause 21.3 – an employers' duty to notify an employee at least 14 days in advance if work is not required on a public holiday other than Christmas Day and Good Friday and the deeming of such days as annual leave

Clause 21.4 – allocation of an extra day of annual leave or 250% of an ordinary daily payment where Good Friday or Christmas Day fall during an employee's period of annual leave

MEAA submit that precluding access by employees who work public holidays at ordinary rates of pay to clauses 21.3 and 21.4 – which are plainly meant to apply to such employees – is incorrect.

We respectfully request that the Commission adjust the ED so that it reflects the position reflected in the JPMA since its inception.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Chesher', with a small dot at the end.

Matthew Chesher
Director, Legal and Policy

ATT



**Fair Work Commission
AMOD2014/275 – Journalists Published Media Award**

Fair Work Commission
William Street
East Sydney NSW

19-04-2018

Dear Associate,

AMOD2014/275 – Journalists Published Media Award

The Media, Entertainment and Arts Alliance (MEAA) wish to comment on the Fair Work Commission's (the Commission's) Full Bench Decision of 21 March 2018 with respect to the *Journalists Published Media Award 2010* (the JPMA).

The decision of the Full Bench - [2018] FWCFB 1548 – states at paragraphs 516 to 519:

[516] The Full Bench is minded to accept all matters agreed between parties with the exception of item 25, as follows.

Item 25 – Public Holidays

[517] Interested parties agreed [268](#) to amend clause 25.3 of the exposure draft to clarify that it only applies to employees entitled to additional annual leave under clause 22.2(a). [269](#) The News Ltd proposed wording is:

25.3 Employees receiving additional annual leave

(a) Clauses 25.1, 25.2, 22.4 and 22.5 does not apply to any employee receiving additional annual leave under clause 22.2(a).'

[518] Clause 25.1 states that 'Public holiday entitlements are provided for in the NES.' The Commission is concerned that the clause 25.1 exclusion would have the appearance of excluding the application of NES entitlements from the provisions relating to additional annual leave in clause 25.3.

[519] We are prepared to make the other proposed changes excluding clauses 25.2, 22.4 and 22.5 from applying to clause 25.3, but not clause 25.1. On that basis, we intend to vary the exposure draft as follows:

25.3 Employees receiving additional annual leave

(a) Clauses 22.4, 22.5 and 25.2 do not apply to any employee receiving additional annual leave under clause 22.2(a).

📍 PO Box 723 Strawberry Hills NSW 2012 📞 1300 656 513

BUILT ON INTEGRITY. POWERED BY CREATIVITY. MEAA.ORG

In providing comment, MEAA believe that it is important to compare the Full Bench's modified clause 25.3 and the equivalent clause in the current (26 March 2018) JPMA Exposure Draft

The Exposure Draft states at clause 25.3(a):

Clauses 22.3, 22.4 and 25.2 do not apply to any employee receiving additional annual leave under clause 22.2(a).

MEAA respectfully submit that the current Exposure Draft¹, in combination with the Commission's decision to amend clause 25.3 would lead to an unjust outcome for editorial employees presently entitled to additional annual leave - either two weeks or two weeks and three days under current clause 22.2 - in return for working on public holidays at ordinary rates of pay ('eligible employees').

The practical effect of this decision, if incorporated into the JPMA, would be to eliminate:

- A substitute annual leave day or payment at double time where Christmas Day or Good Friday fall within an eligible employee's period annual leave under **clause 22.4²**; and
- Eligible employees' access annual leave loading under **clause 22.5**.

Although the Full Bench has decided not to delete clause 22.3³ in clause 25.3, it appears to have gone further than the Exposure Draft by removing mention of clause 22.5 (annual leave loading) from clause 25.3.

Notwithstanding the loss of existing entitlements, if the variations set out above stand, there will be inconsistency between clauses 22 and 25.3. This would lead to differing interpretations across relevant media workplaces.

MEAA is presently in discussions with Minter Ellison concerning the above matters. These discussions are being conducted in good faith.

MEAA nonetheless foreshadow that if the above amendments are progressed by the Commission or any of the parties, that it be provided with the opportunity to be heard in the Commission.

Yours sincerely,



Paul Murphy
MEAA Chief Executive

¹ All numbering in this correspondence relates to the Exposure Draft dated 26 March 2018

² See Exposure Draft clause 25.3

³ The Exposure Draft has a 'strike-through' of this sub-clause in clause 25.3