

**SUBMISSION TO THE SENATE, EDUCATION, EMPLOYMENT AND WORKPLACE  
RELATIONS COMMITTEE BY THE VICTORIAN BRANCH OF THE SHOP DISTRIBUTIVE &  
ALLIED EMPLOYEES' ASSOCIATION**

**RE DIVISION 10 PUBLIC HOLIDAYS OF THE NES**

This submission by the Victorian Branch of the Shop Distributive & Allied Employees' Association (the SDA Victorian Branch) supports and supplements the submission by our National Office. We endorse in full the submission by our National Office and in particular the importance of arbitration to settle issues and grievances which arise in the workplace.

The SDA Victorian Branch wishes to address this submission in particular to an aspect of the National Employment Standards on public holidays.

We propose that the words "*other than a day or part-day, or a kind of a day or part-day, that is excluded by the regulations from counting as a public holiday*" in Section 115(1)(b) be deleted.

This means Section 115(1)(b) as amended would then read "(b) any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday".

Division 10 of the National Employment Standards covers public holidays.

Although eight public holidays are listed in the NES there are generally eleven or twelve prescribed public holidays in the States and Territories.

The NES recognises this by effectively picking up all public holidays prescribed by States and Territories and making them a national standard for awards and agreements and non-award employees within that State or Territory. This occurs by virtue of Section 115(1)(b).

The NES goes even further by automatically substituting public holidays if State legislation/regulation substitutes a public holiday. This occurs by virtue of Section 115(2).

So the NES on public holidays is predicated on the assumption that State and Territory Parliaments will legislate a public holidays regime which the NES will pick up and apply.

This approach recognises that the State Parliaments will legislate to prescribe public holidays which are important to local communities. For example, Melbourne Cup Day is a big day and is

very important to the people of Melbourne. Equally, Geelong Cup Day is a big day in Geelong and is very important to the people of Geelong. In Tasmania, Hobart Regatta Day is an important public holiday south of Oatlands and Recreation Day is an important public holiday for Oatlands and north of Oatlands. State and Territory legislation recognises the importance of these public holidays to local communities.

The offending part of Section 115(1)(b) which we propose be deleted allows a Federal Government to remove any public holiday by regulation even if it has been legislated by a State or Territory Parliament. It can do this without any legislation passing through the House of Representatives and the Senate.

Easter Saturday is currently a public holiday in all States and Territories other than Tasmania. A Federal Government could abolish Easter Saturday by regulation.

Note that the Kennett Government abolished Easter Saturday as a public holiday in Victoria in 1993 but this was done by legislation which passed through both Houses of the Victorian Parliament.

A Federal Government could abolish Melbourne Cup Day or Hobart Regatta Day by regulation.

It is difficult to contemplate the circumstances in which a Federal Government would want to abolish a public holiday in the States and Territories.

The effect would be to reduce the entitlements of employees – including the entitlement to have the day off on a public holiday, the entitlement to be paid the standard rate for the public holiday and the entitlement, if an employee works on the public holiday, to receive the penalty rate prescribed by an award or agreement.

All these rights would be stripped away unilaterally by a Federal Government regulation removing a public holiday.

Such significant changes should not occur by the Federal Government making a regulation.

In the rare event that it is believed a public holiday should be abolished, the Federal Government should bring forward legislation to be debated by the House of Representatives and the Senate.

This is even more so the case when it may be a public holiday which has been legislated by a State or Territory Parliament and it may even be an election commitment by the State or Territory Government.

To overturn State or Territory legislation by regulation without prior scrutiny by the House of Representatives and the Senate is completely inappropriate.

We recommend that the offending part of Section 115(1)(b) as outlined above be removed.