

13 February 2015

**PENALTY RATES AM2014/305
PUBLIC HOLIDAYS AM2014/301
REVIEW OF THE HOSPITALITY INDUSTRY GENERAL AWARD
DRAFT DETERMINATION AND OTHER MATTERS**

We act for The Australian Hotels Association (AHA) and the Accommodation Association of Australia (AAA).

The following submission and draft determination is provided in accordance with the Statements issued on 17 December 2014 ([2014] FWC 9175 the penalty rates matter and [2014] FWC 9207, the public holidays matter).

**PENALTY RATES AM2014/305
Comments in respect of Draft Timetable**

The AHA and the AAA support the inclusion in the timetable of the hearing of common evidence before the industry specific evidence. It is an efficient use of time and resources.

The AHA and AAA submit that the step in the timetable, on 6 March 2015 (requiring the employer parties to file an outline of submissions and findings they seek the Commission to make) is not necessary and should be removed.

Each party should be able to identify how any part of the common evidence supports findings that should be made in its specific case, rather than the Commission making some general findings on the common evidence.

Common Evidence

Associations with interests in the following awards:

- a. *Fast Food Industry Award 2010;*
- b. *General Retail Industry Award 2010;*
- c. *Hair and Beauty Industry Award 2010;*
- d. *Hospitality Industry General Award 2010 and*
- e. *Pharmacy Industry Award 2010*

will be calling an expert witness, Lynne Pezzullo, Lead Partner Health Economics and Social Policy, Deloitte Access Economics.

Ms Pezzullo has a Bachelor of Economics (First Class Honours) from the University of Adelaide.

The evidence to be provided by Ms Pezzullo goes to:

- f. trends in working hours;
- g. effect of penalty rates on staffing;
- h. consumer activity on weekends across the services sector;
- i. wage elasticity of labour demand;
- j. supply side view of labour demand;
- k. employee preferences in relation to hours of work and work-life stress;
- l. factors that influence weekend workers' decision making in relation to working weekends;
- m. workplace composition and employment characteristics of weekend workers in the services sector;
- n. difficulties experienced by weekend workers of working weekends;
- o. time use of weekend and non-weekend workers;
- p. employer responses to wage costs and consumer demand;
- q. weekend worker views regarding the relative importance of Saturdays and Sundays;
and
- r. the frequency of weekend work for weekend workers.

The research conducted by Deloitte Access Economics included literature and data review, the design of a survey conducted by i-Link Research Solutions and an analysis of the survey results.

The AHA and AAA may call industry expert witnesses in the industry specific part of the proceedings.

Draft Determination

A copy of the draft determination the AHA and AAA submit would provide fair and relevant minimum safety net conditions in relation to work on weekends and public holidays is attached.

PUBLIC HOLIDAYS AM2014/301

The AHA and AAA do not seek a specific penalty just for part-day holidays and will not seek to cap the number of public holidays to a maximum of 11 per year in the award.

The attached draft determination includes a penalty rate for the eight public holidays listed at Section 115(1) of the *Fair Work Act 2009* and a different penalty rate for any additional days, which includes part day declared or prescribed under a law of a State or Territory to be public holidays.

The AHA and AAA submit that all penalty rates proposed for weekend and public holiday work in the Hospitality Industry Award 2010 need to be considered in the same context and the arguments for changes rely on the same expert and industry evidence. As the part-day

penalty rate is now covered in the rate the AHA and AAA proposes for all additional public holidays, the AHA and AAA submit that the matter should be dealt with in the penalty rates proceedings.

On that basis, the AHA and AAA would not need to participate in any separate public holiday proceedings (save potentially for the making of submissions subject to the positions taken by any other interested parties).

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DRAFT DETERMINATION

Fair Work Act 2009

Part 2-3, Div 4 – 4 Yearly reviews of modern awards

Hospitality Industry General Award 2010 [MA000009]

Hospitality industry

COMMISSION MEMBER

SYDNEY, XX YYY 2015

Review of modern awards to be conducted.

Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2014/272, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Hospitality General Industry Award 2010* be varied as follows:

[1] At clause 3, insert the following in alphabetical order:

“**additional holiday**” means for the purposes of entitlements or benefits arising under this award, any day or part day falling within the scope of s 115(b) of the Act.

If, under (or in accordance with a procedure under) a law of a State or Territory, a day or part day is substituted for a day or part day that would otherwise be an additional holiday because of the definition above, then the substitute day or part-day is the additional holiday.

“**holiday**” means any day or part day defined as an additional holiday or a public holiday under this Award.

“**public holiday**” means, for the purposes of entitlements or benefits arising under this Award, each of these days:

- (i) 1 January (New Year’s Day);
- (ii) 26 January (Australia Day);
- (iii) Good Friday;
- (iv) Easter Monday;
- (v) 25 April (Anzac Day);
- (vi) The Queen’s birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
- (vii) 25 December (Christmas Day);
- (viii) 26 December (Boxing Day).

If, under (or in accordance with a procedure under) a law of a State or Territory, a day is substituted for a day that would otherwise be a public holiday because of the definition above, then the substitute day is the public holiday.

[2] By deleting clause 32 and replacing it with the following:

32. Additional Remuneration

32.1 An employee performing work on the following days will be paid the following percentage of the minimum hourly wage rate in clause 20 Minimum Wages for the relevant classification:

	Monday to Friday	Saturday	Sunday	Public holiday	Additional holiday
	%	%	%	%	%
Full-time and part-time	100	125	150	225	200
Casual (inclusive of the 25% casual loading)	125	150	150	175	125

32.2 Holidays

(a) An employee other than a casual working on a holiday will be paid for a minimum of four hours' work. A casual employee working on a holiday will be paid for a minimum of two hours' work.

(b) Employees (other than casual employees) who work on a holiday may, by agreement, perform such work at their applicable ordinary hourly rate plus 25% additional loading rather than the additional remuneration prescribed in clause 32.1 provided that equivalent paid time is added to the employee's annual leave or one day instead of such holiday will be allowed to the employee during the week in which such holiday falls. Provided that such holiday may be allowed to the employee within 28 days of such holiday falling due.

(c) An employee other than a casual working on Christmas Day when it falls on a weekend, and is not a public holiday as defined in this Award will be paid an

additional loading of 50% of their applicable ordinary hourly rate for the hours worked on that day and will also be entitled to the benefit of a substitute day.

32.3 Other Additional Remuneration

Employees will be entitled to the following additional remuneration for work performed at the following times:

(a) Monday–Friday—7.00 pm to midnight: 10% of the standard hourly rate per hour or any part of an hour for such time worked within the said hours;

(b) Monday–Friday—midnight to 7.00 am: 15% of the standard hourly rate per hour or any part of an hour for such time worked within the said hours.

32.4 Additional Remuneration not cumulative

Except as provided in clause 31 Breaks, where time worked is required to be paid for at more than the ordinary rate such time will not be subject to more than one additional remuneration rate, but will be subject to the rate which is to the employee's greatest advantage.

[3] By deleting clause 37 and replacing it with the following:

37. Holidays

(a) Substitution by Agreement

By agreement between the employer and the majority of employees in the relevant enterprise or section of the enterprise, an alternative day may be taken as the holiday instead of any of the holidays in this award..

(b) Additional arrangements for full-time employees:

(i) A full-time employee whose rostered day off falls on a holiday must, subject to clause 32.2 either:

- be paid an extra day's pay; or
- be provided with an alternative day off within 28 days; or

- receive an additional day's annual leave.

For the purposes of this subclause a "day" is equal to the length of time of the rostered day off that falls on the holiday.

- (ii) A full-time employee who works on a holiday which is subject to substitution as provided for by this Award will be entitled to the benefit of the substitute day.

(c) Arrangements for part-time employees

Part-time employees are entitled to holidays as defined in clause 3 without loss of pay if those holidays fall on days agreed under clauses 12.3 and 12.4. Part-time employees who work on a holiday must be paid in accordance with clause 32.

(d) Part Day Additional Holidays

(i) Where a full-time employee is usually rostered to work ordinary hours on a part day additional 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 an additional holiday for such hours and paid their ordinary rate of pay for those hours.

(ii) A full-time employee not rostered to work on a part-day additional holiday, other than an employee who has exercised their right to refuse to work in accordance with the NES, will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day additional holiday.

[4] Delete Schedule H.

The determination shall operate on and from XX YYY 2015

BY THE COMMISSION