

From: Phillip Ryan <legal@aha.org.au>
Sent: Thursday, 25 March 2021 9:25 AM
To: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>
Cc: 'Ben Redford' <Ben.Redford@unitedworkers.org.au>
Subject: RE: AM2020_103 - Award Flexibilities

Dear Associate,

We refer to the above matter and hereby attach an AMENDED draft determination.

Yours faithfully,

Phillip Ryan
National Director, Legal and Industrial Affairs

From: Phillip Ryan <legal@aha.org.au>
Sent: Wednesday, 24 March 2021 14:16
To: 'Chambers - Ross J' <Chambers.Ross.j@fwc.gov.au>
Cc: 'Ben Redford' <Ben.Redford@unitedworkers.org.au>
Subject: AM2020_103 - Award Flexibilities

Dear Associate,

We refer to the above matter and the conference listed before His Honour tomorrow morning.

We hereby attach a draft determination in relation to the loaded rates proposal advanced by the Australian Hotels Association.

Yours faithfully,

Phillip Ryan
National Director, Legal and Industrial Affairs



DRAFT DETERMINATION

Fair Work Act 2009

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

Hospitality Industry (General) Award 2020

(AM2020/103)

JUSTICE ROSS, PRESIDENT

XXXXX

XXXXX

_____ 2021

Award schedule – COVID-19 pandemic

A. Further to the decision [_____] issued by the Full Bench of the Fair Work Commission on _____ 2021, the above award is varied as follows:

1. In the Table of Contents add a new Schedule K and Schedule L.
2. Deleting clause 15.1 (b) and inserting the following:

(b) The average of 38 hours per week is to be worked in one of the following ways:

(i) 38 hours each week with a minimum of 2 days off each weekly period;

(ii) 76 hours over a 2 week period with a minimum of 4 days off each 2 week period;

(vi) 152 hours each 4 week period with a minimum of 8 days off each 4 week period;

(vii) 160 hours each 4 week period with a minimum of 8 days off each 4 week period plus an accrued day off;

3. Deleting clause 29.2 (b) and inserting the following:

(b) for a casual employee, at the percentage specified in column 3 of that Table of the ordinary hourly rate of the employee under [Table 3—Minimum rates](#)

plus the additional amount specified in that column for hours worked between 7.00 pm and 7.00 am on a Monday to Friday.

Table 14—Penalty rates

Column 1 Time of ordinary hours worked	Column 2 Full-time and part-time employees	Column 3 Casual employees
	% of ordinary hourly rate	% of ordinary hourly rate (inclusive of casual loading)
Monday to Friday – 7.00 am to 7.00 pm	100%	125%
Monday to Friday – 7.00 pm to midnight	100% plus \$2.31 per hour	125% plus \$2.31 per hour
Monday to Friday— midnight to 7.00 am	100% plus \$3.46 per hour	125% plus \$3.46 per hour
Saturday	125%	150%
Sunday	150%	175%
Public holiday	225%	250%

NOTE 1: Schedule B—Summary of Hourly Rates of Pay sets out the hourly penalty rate for all employee classifications, including junior employees and apprentices.

NOTE 2: The additional amount specified for hours worked between 7.00 pm and 7.00 am on a Monday to Friday is to be paid on a pro-rata basis for a part hour.

4. Add the following Schedule K to the award:

Schedule K – Loaded Rate Arrangements

- K.1 Subject to the provisions of this Schedule, an employer may elect to pay a full-time employee classified at Level 3 or above, a percentage of the ordinary hourly rate of the employee in satisfaction of the requirements of Clause 26.14 - Split Shift Allowance, Clause 28 - Overtime and Clause 29 - Penalty Rates (**Loaded Rate**).
- K.2 If an employer elects to pay an employee a Loaded Rate, the employer must give to the employee a written loaded rate arrangement in accordance with the form set out in Schedule L (**Loaded Rate Arrangement**).
- K.3 The employer must keep a copy of the Loaded Rate Arrangement as a time and wages record.
- K.4 Any dispute regarding the operation of Schedule K may be referred to the Fair Work Commission in accordance with clause 40 – Dispute resolution.
- K.5 A Loaded Rate Arrangement under this Schedule is not valid unless it contains a notice that the employer consents to a dispute arising from the arrangement being settled by the Fair Work Commission through arbitration in accordance with Clause 40 – Dispute resolution and section 739 (4) of the Act.

Loaded Rate Parameters

- K.6 The Loaded Rate Parameters are/include:
- a) The roster cycle must operate weekly commencing on a Monday;
 - b) Monday to Friday: a maximum of 11.5 hours (excluding meal breaks) per day/shift rostered between 7:00am and 12:00am (midnight);
 - c) Saturday: a maximum of 10 hours (excluding meal breaks);
 - d) Sunday: a maximum of 10 hours (excluding meal breaks);
 - e) The provision of the split shift allowance, if the period between shifts is 3 hours or less; and
 - f) The Loaded Rate Range of Days and Loaded Rate Maximum Hours applicable to the Loaded Rate Percentage as set out in the table below:

Loaded Rate Percentage (% of ordinary hourly rate)	Loaded Rate Range of Days	Loaded Rate Maximum Hours
10.20%	Monday to Friday	40
20.00%	Monday to Friday	45
16.95%	Monday to Saturday	40
23.40%	Monday to Saturday	45
26.85%	Monday to Sunday	40

29.45%	Monday to Sunday	45
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K.7 Unless modified by clause K.6, and subject to clause K.8, a Loaded Rate Arrangement does not vary the application of the other terms of this award.

K.8 The Loaded Rate Percentage will apply to, and be in satisfaction of, work performed and the allowances specified, within the Loaded Rate Parameters.

NOTE 1: An employee will be entitled to overtime in accordance with Clause 28-Overtime for work which exceeds the daily and/or shift maximum hours, the Loaded Rate Range of Days or the Loaded Rate Maximum Hours each week.

NOTE 2: If an employee performs work beyond the scope of the Loaded Rates Parameters, but does not exceed the daily and/or shift maximum hours, the Loaded Rate Range of Days or the Loaded Rate Maximum Hours each week, the employee will be entitled to the applicable penalty rate or allowance in accordance with the award. For example, if the employee commences work at 6:00am on a Tuesday, the additional payment pursuant to clause 29.2 – Penalty Rates will be \$3.46. If the employee has a split shift where the period exceeds 3 hours, the additional payment is \$1.49, being the difference between the split shift allowances in Clause 26.14 – Split shift allowance.

K.9 The employer must keep a record of the starting and finishing times of work, and any unpaid breaks taken. This record must be signed by the employee or acknowledged as correct in writing (including by electronic means) by the employee, each pay period or roster cycle.

Base Rate of Pay for employees on a Loaded Rate Arrangement

K.10 For the purposes of the [NES](#), the base rate of pay of an employee receiving a Loaded Rate under this Schedule is the employee’s ordinary hourly rate and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.

Variation and Termination of a Loaded Rate Arrangement

K.11 Subject to Clause 39 – Consultation about changes to rosters or hours of work, an employer may vary the Loaded Rate Arrangement by giving 2 weeks’ written notice of the issuing a new Loaded Rate Arrangement.

K.12 A Loaded Rate Arrangement may be terminated:

- (i) at any time by written agreement between the employee and the employer; or

(ii) by the employer giving 2 weeks' written notice.

K.13 A Loaded Rate Arrangement terminated in accordance with clause K.12 (b) ceases to have effect at the end of the notice period.

5. Add the following Schedule L to the award:

Schedule L – Loaded Rate Arrangement Form

Name of employer: _____

Name of employee: _____

Employee Classification/Wage Level: _____

Loaded Rate Range of Days: _____

Loaded Rate Maximum Hours: _____ Loaded Rate Percentage: _____

Ordinary Hourly Rate: _____ Loaded Rate: _____

Pay Period Commencement Date: _____

Acknowledgement and Agreement by Employer

The employer acknowledges that by entering into this arrangement, the employee must be paid the Loaded Rate for all hours up to the Loaded Rate Maximum Hours each week.

The employer acknowledges and agrees to roster the Loaded Rate Maximum Hours in accordance with the Loaded Rate Parameters defined in clause K.6 of Schedule K.

The employer agrees that additional payments will apply to work performed on days, or at times, beyond the scope of the Loaded Rate Parameters, or for allowances not specified in the Loaded Rate Parameters.

By entering into this arrangement, the employer consents to any dispute arising from this arrangement being settled by the Fair Work Commission through arbitration in accordance with Clause 40 – Dispute resolution and section 739 (4) of the Act.

Name of employer representative: _____

Signature of employer representative: _____

Date signed: ____/____/20____

6. Updating cross references accordingly.

7. This determination comes into effect on _____2021.

PRESIDENT