

[2016] FWCFB 7285

The attached document replaces the document previously issued with the above code on 12 October 2016.

Attachment A6 – Hair and Beauty Industry Award 2010 [MA000005] has been deleted and  
Attachment A7 – Pharmacy Industry Award 2010 [MA0000012] has been renamed  
Attachment A6 – Pharmacy Industry Award 2010 [MA0000012]

Jo Richardson

Associate to Justice Ross

Dated 13 October 2016





# STATEMENT

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards—Penalty rates** (AM2014/305)

JUSTICE ROSS, PRESIDENT  
VICE PRESIDENT CATANZARITI  
DEPUTY PRESIDENT ASBURY  
COMMISSIONER HAMPTON  
COMMISSIONER LEE

MELBOURNE, 12 OCTOBER 2016

*4 yearly review of modern awards – penalty rates.*

[1] On 8 September 2016 we issued a [Statement and Directions](#)<sup>1</sup> from which we sought to clarify the status of the various claims before the Fair Work Commission in the penalty rates proceedings. A draft summary of the claims before us was prepared by staff of the Commission and attached to the Statement. Any corrections or amendments to the draft summary were to be filed with the Commission by 4 pm Friday, 23 September 2016.

[2] [ABI](#) confirmed that the variations to the *Hair and Beauty Industry Award 2010* which had been proposed by ABI, the NSW Business Chamber and the Hair and Beauty Australia Industry Association were no longer pressed. [Correspondence](#) was also received from the Restaurant & Catering Industry Association (RCI) confirming that its claim in respect of clauses 34.4(c) and 34.4(d) of the *Restaurant Industry Award 2010* was no longer pressed.<sup>2</sup>

[3] No correspondence was received from other parties in relation to the draft summary.

[4] We now republish the draft summary in final form, incorporating the amendments detailed above.

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<sup>1</sup> [\[2016\] FWCFB 6460](#)

<sup>2</sup> [Correspondence - 8 September 2016 Statement](#) – Restaurant & Catering Industrial – 23 September 2016

PRESIDENT

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**Attachment A — Proposed Variations**

[Attachment A1—Hospitality Industry \(General\) Award 2010 \[MA000009\]](#)

[Attachment A2—Restaurant Industry Award 2010 \[MA000119\]](#)

[Attachment A3—Registered and Licensed Clubs Award 2010 \[MA000058\]](#)

[Attachment A4—General Retail Industry Award 2010 \[MA000004\]](#)

[Attachment A5—Fast Food Industry Award 2010 \[MA000003\]](#)

[Attachment A6—Pharmacy Industry Award 2010 \[MA000012\]](#)

**NOTE 1:** A joint application by the Australian Federation of Employers and Industries and the Australian Amusement, Leisure and Recreation Association Inc. to vary penalty rates in the *Amusement, Events and Recreation Award 2010* was [withdrawn by correspondence dated 26 June 2015](#).

**NOTE 2:** A joint application by the Australian Federation of Employer and Industries and the Drycleaning Institute of Australia to vary penalty rates in the *Dry Cleaning and Laundry Industry Award 2010* was [withdrawn by correspondence dated 12 August 2015](#).

**Attachment A1—Proposed Variations—Hospitality Industry (General) Award 2010  
[MA000009]**

**Claims by Australian Hotels Association and Accommodation Association of Australia**

**3. Definitions and interpretation**

**3.1** In this award, unless the contrary intention appears:

...

**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.

...

## 32. **Penalty-rates 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:

	<b>Monday to Friday</b>	<b>Saturday</b>	<b>Sunday</b>	<b>Public holiday</b>	<b><u>Additional holiday</u></b>
	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
Full-time and part-time	100	125	<del>175</del> <u>150</u>	<del>250</del> <u>225</u>	<del>250</del> <u>200</u>
Casual (inclusive of the 25% casual loading)	125	150	<del>175</del> <u>150</u>	<del>275</del> <u>175</u>	<u>125</u>

## 32.2 **Public holidays-Holidays**

- (a) An employee other than a casual working on a public holiday will be paid for a minimum of four hours' work. A casual employee working on a public holiday will be paid for a minimum of two hours' work.
- 29.1.1 Employees (other than casual employees) who work on a ~~prescribed~~ holiday may, by agreement, perform such work at their applicable ordinary hourly rate plus ~~50%~~ 25% additional loading rather than the ~~penalty-rate~~ 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 public 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 ~~prescribed as~~ a public holiday ~~under the NES 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 penalty-additional remuneration**

Employees will be entitled to the following additional ~~penalty~~ 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 **Penalty-rates 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 ~~penalty-additional remuneration rate~~, but will be subject to ~~that penalty the rate~~ which is to the employee's greatest advantage.

...

## **37. ~~Public holidays~~ Holidays**

### **~~37.1 — National Employment Standards~~**

#### **(a) ~~Public holidays are provided for in the NES~~ 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 ~~public~~ holiday instead of any of the ~~days prescribed in s.115 of the Act~~ holidays in this award.

#### **(b) Additional arrangements for full-time employees:**

- (i) A full-time employee whose rostered day off falls on a ~~public~~ 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 ~~public~~ holiday which is subject to substitution as provided for by ~~the NES~~ this award will be entitled to the benefit of the substitute day.

#### **(c) Arrangements for part-time employees**

Part-time employees are entitled to ~~public holidays prescribed in s.115 of the Act~~ holidays as defined in clause 3 without loss of pay if those ~~public~~ holidays fall on days agreed under clauses 12.3 and 12.4. Part-time employees who work on a ~~public~~ 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.



## **~~Schedule H – 2015 Part-day Public Holidays~~**

~~This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the NES.~~

~~**H.1** — Where a part day public holiday is declared or prescribed between 7.00pm and midnight on Christmas Eve (24 December 2015) or New Year's Eve (31 December 2015) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:~~

- ~~(a) — All employees will have the right to refuse to work on the part day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.~~
- ~~(b) — Where a part time or full time employee is usually rostered to work ordinary hours between 7.00pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.~~
- ~~(c) — Where a part time or full time employee is usually rostered to work ordinary hours between 7.00pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.~~
- ~~(d) — Where a part time or full time employee is usually rostered to work ordinary hours between 7.00pm and midnight, 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.~~
- ~~(e) — Excluding annualised salaried employees to whom clause H.1(f) applies, where an employee works any hours between 7.00pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.~~
- ~~(f) — Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro rata annual leave equivalent to the time worked between 7.00pm and midnight.~~
- ~~(g) — An employee not rostered to work between 7.00pm and midnight, other than an employee who has exercised their right in accordance with clause H.1(a), 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 public holiday.~~

~~This schedule is not intended to detract from or supplement the NES.~~

~~This schedule is an interim provision and subject to further review.~~

[NOTE: Pending the outcome of its application to amend the coverage of the Hospitality Award 2010 regarding catering businesses, Restaurant and Catering Industrial may seek to amend the public holiday penalty rate for full-time and part-time employees per its [outline of submissions of 1 December 2014](#).]

**Attachment A2—Proposed Variations—Restaurant Industry Award 2010 [MA000119]****Claims by Restaurant & Catering Industrial****34. Penalty rates****34.1 Penalty rates for work on weekends and public holidays**

An employee working ordinary time hours on the following days will be paid the following percentage of the minimum wage in clause 20—Minimum wages for the relevant classification:

Type of employment	Monday to Friday	Saturday	Sunday	Public holidays
	%	%	%	%
Full-time and part-time	100	125	<del>150</del> 125	<del>250</del> 150
Casual <del>Introductory Level,</del> <del>Level 1, Level 2</del>	125	150	150	<del>250</del> <u>150</u>
<del>(inclusive of 25% casual loading)</del>				
<del>Casual Level 3 to Level 6</del>	<del>125</del>	<del>150</del>	<del>175</del>	<del>250</del>
<del>(inclusive of casual 25% loading)</del>				

**~~34.1A Special condition regarding existing employees~~**

~~No existing employee classified as Level 3 or above shall be moved down to pay grade Levels 1 or 2 or be discriminated against in the allocation of work as a result of the variation of clause 34.1 by the Full Bench of the Fair Work Commission in proceedings number C2013/6610.~~

**~~34.2 Additional payment for work done between the hours of 10.00 pm to 7.00 am on Monday to Friday~~**

~~(a) An employee, including a casual, who is required to work any of their ordinary hours between the hours of 10.00 pm and midnight Monday to Friday inclusive, or between midnight and 7.00 am Monday to Friday inclusive, must be paid an additional amount per hour calculated according to the following:~~

**~~(i) Between 10.00 pm and midnight~~**

~~For each hour or part of an hour worked during such times 10% of the standard hourly rate per hour extra.~~

**~~(ii) Between midnight and 7.00 am~~**

~~For each hour or part of an hour worked during such times 15% of the standard hourly rate per hour extra.~~

~~(b) For the purposes of this clause midnight will include midnight Sunday.~~

**34.2 Additional payment for work done between the hours of midnight and 5.00 am Monday to Friday**

- (a) An employee, including a casual, who is required to work any of their ordinary hours between the hours between midnight and 5.00 am Monday to Friday inclusive, must be paid an additional shift allowance of 5% per hour worked.**
- (b) For the purposes of this clause midnight will include midnight Sunday.**

## Claims by Australian Business Industrial and NSW Business Chamber

### 34. Penalty rates

#### 34.1 Penalty rates for work on weekends and public holidays

An employee working ordinary time hours on the following days will be paid the following percentage of the minimum wage in clause 20—Minimum wages for the relevant classification:

Type of employment	Monday to Friday	Saturday	Sunday	Public holidays
	%	%	%	%
Full-time and part-time	100	125	150	<del>250</del> <u>200</u>
Casual Introductory Level, Level 1, Level 2 (inclusive of 25% casual loading)	125	150	150	<del>250</del> <u>125</u>
Casual Level 3 to Level 6 (inclusive of casual 25% loading)	125	150	175	<del>250</del> <u>125</u>

#### 34.1A Special condition regarding existing employees

No existing employee classified as Level 3 or above shall be moved down to pay grade Levels 1 or 2 or be discriminated against in the allocation of work as a result of the variation of clause 34.1 by the Full Bench of the Fair Work Commission in proceedings number C2013/6610.

#### 34.2 Additional payment for work done between the hours of 10.00 pm to 7.00 am on Monday to Friday

(a) An employee, including a casual, who is required to work any of their ordinary hours between the hours of 10.00 pm and between midnight and 5.00 am Monday to Friday inclusive, or between midnight and 7.00 am Monday to Friday inclusive, must be paid an additional shift allowance amount per hour calculated according to the following:

(i) **Between 10.00 pm and midnight**

For each hour or part of an hour worked during such times—10% of the standard hourly rate per hour extra.

(ii) **Between midnight and 7.00 am**

For each hour or part of an hour worked during such times—15% of the standard hourly rate per hour extra.

(b) For the purposes of this clause midnight will include midnight Sunday.

### **34.3 Penalty rates not cumulative**

Except as provided in clause 32—Breaks, where time worked is required to be paid at more than the ordinary rate such time will not be subject to more than one penalty, but will be subjected to that penalty which is to the employee's greatest advantage.

### **34.4 Additional provisions for work on public holidays**

- (a) An employee other than a casual working on a public holiday must be paid for a minimum of four hours' work.
- (b) A casual employee working on a public holiday must be paid for a minimum of two hours' work.
- (c) Employees (other than casual employees) who work on a prescribed holiday may, by agreement, perform such work at a rate of ~~150%~~ 100% of the relevant minimum wage in clause 20—Minimum wages, rather than the penalty rate prescribed in clause 34.1, provided that equivalent paid time is added to the employee's annual leave or one day instead of such public holiday will be allowed to the employee during the week in which such holiday falls. Provided further that such holiday may be allowed to the employee within 28 days of such holiday falling due.
- (d) An employee other than a casual working on Christmas Day when it falls on a weekend and it is not a prescribed public holiday must be paid an additional loading of 50% of their ordinary time rate for the hours worked on that day and will also be entitled to the benefit of a substitute day.

**Attachment A3—Proposed Variations—Registered and Licensed Clubs Award 2010 [MA000058]**

**Claims by Clubs Australia Industrial**

**29. Penalty rates**

**29.1** An employee other than a maintenance and horticultural employee performing work on the following days will be paid the following percentage of the minimum wage rate in clause 17—Minimum wages for the relevant classification:

	<b>Monday to Friday</b>	<b>Saturday</b>	<b>Sunday</b>	<b>Public holiday</b>
	%	%	%	%
Full-time and part-time	100	<del>150</del> <u>125</u>	<del>175</del> <u>150</u>	<del>250</del> <u>200</u>
Casual (inclusive of the 25% casual loading)	125	150	<del>175</del> <u>150</u>	<del>250</del> <u>200</u>

**29.2** A maintenance and horticultural employee performing work on the following days will be paid the following percentage of the minimum wage rate in clause 17—Minimum wages for the relevant classification:

<b>Monday to Friday and Saturday before 12 noon</b>	<b>Saturday after 12 noon</b>	<b>Sunday</b>	<b>Public holiday</b>
100%	150% for the first 2 hours then 200%	200%	250%

**29.3 Public holidays**

- (a) An employee other than a casual working on a public holiday will be paid for a minimum of four hours' work.
- (b) Employees other than casuals or maintenance or horticultural employees who work on a ~~prescribed public~~ holiday may, by agreement, perform such work at ordinary rates ~~plus 50% additional loading~~, instead of the penalty rate prescribed in clause 29.1, provided that equivalent ~~paid~~ time is added to the employee's paid annual leave or ~~one day instead of such public holiday will be equivalent time off work is~~ 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~~ such day falls on a weekend, and is not prescribed as a public holiday as defined in this Award, will be paid an additional loading of 50% of their ~~ordinary time rate~~ applicable ordinary hourly rate for the hours worked on that day and will also be entitled to the benefit of a substitute day.

**29.4 Late and early work penalty**

Employees other than maintenance or horticultural employees will be entitled to the following additional penalty for work performed at the following times:

- (a) Monday to 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; and
- (b) Monday to 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.

**29.5 Penalty rates not cumulative**

Except as provided in clause 24—Meal breaks, where time worked is required to be paid for at more than the ordinary rate such time will be not subject to more than one penalty, but will be subjected to that penalty which is to the employee's greatest advantage.



**Attachment A4—Proposed Variations—General Retail Industry Award 2010  
[MA000004]**

**Claim by Australian Retailers Association, National Retail Association and Master Grocers Association**

**29 Overtime and penalties**

...

**29.4 Penalty payments**

• **(a) Evening work Monday to Friday**

A penalty payment of an additional 25% will apply for ordinary hours worked after 6.00 pm. This does not apply to casuals.

**(b) Saturday work**

A penalty payment of an additional 25% will apply for ordinary hours worked on a Saturday for full-time and part-time employees. A casual employee must be paid an additional 10% for work performed on a Saturday between 7.00 am and 6.00 pm.

**(c) Sunday work**

A penalty payment of an additional ~~100%~~ 50% loading will apply for all hours worked on a Sunday. This penalty payment also applies to casual employees instead of the casual loading in clause 13.2.

**(d) Public holidays**

**(i)** Work on a public holiday must be compensated by payment at the rate of an additional 150%.

**(ii)** Provided that by mutual agreement of the employee and the employer, the employee (other than a casual) may be compensated for a particular public holiday by either:

**(A)** An equivalent day or equivalent time off instead without loss of pay. The time off must be taken within four weeks of the public holiday occurring, or it shall be paid out; or

**(B)** An additional day or equivalent time as annual leave.

**(iii)** The employee and employer are entitled to a fresh choice of payment or time off by agreement on each occasion work is performed on a public holiday.

**(iv)** If no agreement can be reached on the method of compensation, the default arrangement shall be as per clause 29.4(d)(i).

## **30. Shiftwork**

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### **30.3 Rate of pay for shiftwork**

- (a) Any shiftwork performed between midnight Sunday and midnight Friday will be paid at the rate of 130% (155% for casuals) of the ordinary time rate of pay.
- (b) Any shiftwork performed on a Saturday will be paid at the rate of 150% (175% for casuals) of the ordinary time rate of pay.
- (c) Any shiftwork performed on a Sunday will be paid at the rate of ~~200%~~ 175% (~~225%~~ 200% for casuals) of the ordinary time rate of pay.
- (d) Where an employee elects to work on a public holiday shift then the provisions set out in clause 29.4(d) will apply for all hours of the shift.
- (e) For the purposes of this clause, where a shift falls partly on a public holiday, the shift which commences on the public holiday will be regarded as the public holiday shift. Provided that if the employee elects not to work on a public holiday shift such employee will be entitled to be absent without loss of pay.
- (f) Provided that in any shop where it is mutually agreed between an employer and the majority of employees engaged under the provisions of this clause another shift may be substituted for the shift which commences on the holiday as the holiday shift and in such instance the provisions of clause 29.4(d) relating to such holiday will apply only to the day so substituted.

**Claim by Australian Business Industrial and NSW Business Chamber**

**29 Overtime and penalties**

...

**29.4 Penalty payments**

• (a) **Evening work Monday to Friday**

A penalty payment of an additional 25% will apply for ordinary hours worked after 6.00 pm. This does not apply to casuals.

(b) **Saturday work**

A penalty payment of an additional 25% will apply for ordinary hours worked on a Saturday for full-time and part-time employees. A casual employee must be paid an additional 10% for work performed on a Saturday between 7.00 am and 6.00 pm.

(c) **Sunday work**

A penalty payment of an additional ~~100%~~ 50% loading will apply for all hours worked on a Sunday. This penalty payment also applies to casual employees instead of the casual loading in clause 13.2.

(d) **Public holidays**

(i) Work on a public holiday (other than by a casual) must be compensated by payment at the rate of an additional ~~150%~~ 100%.

(ii) Provided that by mutual agreement of the employee and the employer, the employee (other than a casual) may be compensated for a particular public holiday by either:

(A) An equivalent day or equivalent time off instead without loss of pay. The time off must be taken within four weeks of the public holiday occurring, or it shall be paid out; or

(B) An additional day or equivalent time as annual leave.

(iii) The employee and employer are entitled to a fresh choice of payment or time off by agreement on each occasion work is performed on a public holiday.

(iv) If no agreement can be reached on the method of compensation, the default arrangement shall be as per clause 29.4(d)(i).

**Attachment A5—Proposed Variations—Fast Food Industry Award 2010 [MA000003]**

**Claim by Australian Industry Group**

**25. Hours of work**

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**25.5 Penalty rates**

**(a) Evening work Monday to Friday**

- (i)** A loading of 10% will apply for ordinary hours of work within the span of hours between ~~9.00 pm~~ 10.00 pm and midnight, and for casual employees this loading will apply in addition to their 25% casual loading.
- (ii)** A loading of 15% will apply for ordinary hours of work after midnight, and for casual employees this loading will apply in addition to their 25% casual loading.

**ii. Saturday work**

A loading of 25% will apply for ordinary hours of work within the span of hours on a Saturday, and for casual employees an additional 25% on top of the casual rate.

**iii. Sunday work**

- (i)** A ~~50%~~ 25% loading will apply for all hours of work on a Sunday for full-time and part-time employees.
- (ii)** A ~~75%~~ 50% loading will apply for all hours of work on a Sunday for casual employees, inclusive of the casual loading.

## Claim by Restaurant & Catering Industrial

### 25. Hours of work

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#### 25.5 Penalty rates

##### (a) ~~Evening work Monday to Friday~~

~~(iii) A loading of 10% will apply for ordinary hours of work within the span of hours between 9.00 pm and midnight, and for casual employees this loading will apply in addition to their 25% casual loading.~~

~~(iv) A loading of 15% will apply for ordinary hours of work after midnight, and for casual employees this loading will apply in addition to their 25% casual loading.~~

##### ~~(b) Saturday work~~

~~A loading of 25% will apply for ordinary hours of work within the span of hours on a Saturday, and for casual employees an additional 25% on top of the casual rate.~~

##### ~~(c) Sunday work~~

~~(i) A 50% loading will apply for all hours of work on a Sunday for full time and part time employees.~~

~~(ii) A 75% loading will apply for all hours of work on a Sunday for casual employees, inclusive of the casual loading.~~

##### (a) Penalty rates for work on weekends and public holidays

An employee working ordinary hours of work on the following days will be paid the following percentage of the minimum wage in clause 17—Minimum weekly wages for the relevant classification:

<u>Type of employment</u>	<u>Monday to Friday</u>	<u>Saturday</u>	<u>Sunday</u>	<u>Public holidays</u>
	<u>%</u>	<u>%</u>	<u>%</u>	<u>%</u>
<u>Full-time and part-time</u>	<u>100</u>	<u>125</u>	<u>125</u>	<u>150</u>
<u>Casual employees</u>	<u>125</u>	<u>150</u>	<u>150</u>	<u>150</u>

**(b) Additional payment for work done between the hours of Midnight and 5.00 am Monday to Friday**

An employee, including a casual, who is required to work any of their ordinary hours between the hours between midnight and 5.00 am Monday to Friday inclusive, must be paid an additional shift allowance of 5% per hour worked. For the purposes of this clause midnight will include midnight Sunday.

**30. Public holidays**

**30.1** Public holidays are provided for in the NES.

**30.2** An employer and a majority of employees may agree to substitute another day for a public holiday. If an employee works on either the public holiday or the substitute day public holiday penalties apply. If both days are worked, the public holiday penalties must be paid on one day chosen by the employee.

~~**30.3** Work on a public holiday must be compensated by payment at the rate of 250% (275% for casual employees).~~

**30.3 Alternate compensation for work on public holiday**

An employee other than a casual who works on a prescribed public holiday may, by agreement, perform such work at the ordinary rates rather than the penalty rate prescribed in clause 25.5, provided that four hours annual leave is added to the employee's annual leave balance or they are given four hours time off in lieu within four weeks of the public holiday occurring.

## **Claim by National Retail Association**

### **25. Hours of work**

...

#### **25.5 Penalty rates**

##### **(a) Evening work Monday to Friday**

- (i) A loading of 10% will apply for ordinary hours of work within the span of hours between ~~9.00 pm~~ 10.00 pm and midnight, and for casual employees this loading will apply in addition to their 25% casual loading.
- (ii) A loading of 15% will apply for ordinary hours of work after midnight, and for casual employees this loading will apply in addition to their 25% casual loading.

##### ~~**(b) Saturday work**~~

~~A loading of 25% will apply for ordinary hours of work within the span of hours on a Saturday, and for casual employees an additional 25% on top of the casual rate.~~

##### ~~**(c) Sunday work**~~

- ~~(i) A 50% loading will apply for all hours of work on a Sunday for full time and part time employees.~~
- ~~(ii) A 75% loading will apply for all hours of work on a Sunday for casual employees, inclusive of the casual loading.~~

##### **(b) Weekend work**

A loading of 25% will apply for ordinary hours of work within the span of hours on Saturday and Sunday, and for casual employees an additional 25% on top of the casual rate.

...

### **26. Overtime**

The rate of overtime shall be time and a half for the first two hours on any one day and at the rate of double time thereafter, except on a Sunday which shall be paid for at the rate of double time and on a Public Holiday which shall be paid for at the rate of double time and a half. ~~Casual employees shall be paid 275% on a Public Holiday.~~

...

## **Public holidays**

**30.1** Public holidays are provided for in the NES.

- 30.2** An employer and a majority of employees may agree to substitute another day for a public holiday. If an employee works on either the public holiday or the substitute day public holiday penalties apply. If both days are worked, the public holiday penalties must be paid on one day chosen by the employee.
- 30.3** Work on a public holiday must be compensated by payment at the rate of ~~250%~~ 150% (~~275%~~ 175% for casual employees, inclusive of the casual loading).



## Attachment A6—Proposed Variations—Pharmacy Industry Award 2010 [MA000012]

### Claim by Pharmacy Guild of Australia

#### 26.2 Overtime and penalty rates

##### (a) Overtime

Overtime means authorised additional hours performed at the direction of the employer:

- (i) Hours worked in excess of the ordinary number of hours of work prescribed in clauses 25.2 and 25.3 are to be paid at time and half for the first two hours and double time thereafter. Overtime worked on a Sunday is to be paid at the Sunday rate of double time, and overtime worked on a public holiday is to be paid at the public holiday rate of double time and half.
- (ii) The rates provided by clause 26.2(b) and (c) will not be cumulative on overtime rates.
- (iii) For casual employees the casual loading IS not payable on overtime.

##### ~~(b) Morning and Evening work Monday to Friday~~

~~A loading of 50% (casuals 75%) will apply for hours worked before 8.00 am and a loading of 25% (casuals 50%) for hours between 7.00 pm to 9.00 pm. A loading of 50% will apply to hours worked from 9.00 pm to midnight (casuals 75%).~~

##### ~~(c) Saturday work~~

~~A loading of 100% (casuals 125%) will apply for hours worked before 8.00 am, and a loading of 25% (casuals 50%) will apply for hours of work from 8.00 am to 6.00 pm on a Saturday. A loading of 50% (casuals 75%) will apply from 6.00 pm to 9.00 pm, and a loading of 75% (casuals 100%) for hours from 9.00 pm to midnight.~~

##### ~~(d) Sunday work~~

~~A 100% (casuals 125%) loading will apply for all hours of work on a Sunday.~~

#### 31

#### Public holidays

31.1 Public holidays are provided for in the NES.

31.2 An employer and the employee may by agreement substitute another day for a public holiday. Where there is no agreement the employer may substitute another day but not so as to give an employee less time off work than the employee would have had if the employee had received the public holiday.

~~31.3 Work on a public holiday must be compensated by payment at the rate of 250% (casuals 275%) of the minimum rate.~~

...

**X. Additional remuneration**

**X.1** The employer will pay to an employee the following rates for all ordinary hours worked during the specified periods:

<u>Hours worked</u>	<u>Additional Remuneration Full-time and part-time employees</u>	<u>Additional Remuneration Casual employees (inclusive of casual loading)</u>
	<u>% of minimum hourly rate</u>	
<u>Monday to Friday</u>		
<u>Before 7.00 am</u>	<u>150</u>	<u>175</u>
<u>Between 9.00 and midnight</u>	<u>125</u>	<u>150</u>
<u>Saturday</u>		
<u>Before 7.00 am</u>	<u>200</u>	<u>200</u>
<u>Between 7.00 am &amp; 9.00 pm</u>	<u>125</u>	<u>125</u>
<u>Between 9.00 pm and midnight</u>	<u>150</u>	<u>150</u>
<u>Sunday</u>		
<u>Before 7.00 am</u>	<u>200</u>	<u>200</u>
<u>Between 7.00 am and 9.00 pm</u>	<u>150</u>	<u>150</u>
<u>Between 9.00 pm and midnight</u>	<u>175</u>	<u>175</u>
<u>Public holiday</u>	<u>200</u>	<u>125</u>