



Restaurant  
& Catering

**PUBLIC HOLIDAYS - AM2014/301**

**13 FEBRUARY 2015**

Restaurant & Catering Industrial  
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Level 3, 154 Pacific Highway, St Leonards NSW 2065

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## **Restaurant & Catering Industrial**

- 1) Restaurant & Catering Industrial is a Registered Organisation under the Fair Work (Registered Organisations) Act 2009 and represents the industrial interests of restaurants, cafes, food and catering businesses across Australia.

### **About the Industry**

- 2) The industry turns over some \$24 Billion per annum and is looking down the barrel of 8+% employment growth in the next twelve months. This growth is on top of a sizeable attrition from the industry due to the large number of casual employees engaged.
- 3) Approximately 63% of the industry earns an average 2% after tax and the overall average is only 4%. It is expected profits will further deteriorate in the short term. The restaurant sector is 58% of the hospitality industry and some 62% of employment in the industry. The average employment per business is 8 employees.

### **Public holidays**

- 4) Restaurant & Catering Industrial provides the following submissions in respect to the Statement by the Fair Work Commission, President, Justice Ross on 17 December 2014 [FWC 9207] dealing with public holiday common issues.
- 5) Restaurant & Catering Industrial has had discussions with other interested employer groups in respect to the part-day public holiday issue as set out in paragraph 6 of the Statement FWC 9207 17 December 2014. As a result of these discussions Restaurant & Catering Industrial has narrowed its claim to the attached Variation of the Restaurant Industry Award 2010 [MA000119].
- 6) The Draft Determination for the Restaurant Industry Award has been developed to specifically provide relief for operators by recognising that part-day public holidays are not as significant as full day public holidays and therefore should attract a lower penalty rate. The Draft Determination also provides mechanisms for employees to work at ordinary rates providing alternate compensation with annual leave or time off In lieu. The solutions proposed by Restaurant & Catering Industrial have previously been out of scope with the proceedings originating in AM2012/355

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- 7) The restaurant sector has been severely disadvantaged by the introduction of part-day public holidays with operators forced to close their business on what would be otherwise profitable trading periods over the busy Christmas New Year period.
  - 8) Restaurant & Catering Industrial acknowledges that in limiting the part-day public holiday claim to the Restaurant Industry Award it may now not constitute a common issue and therefore be better dealt with in the Award stage of the 4 yearly Modern Award Review programme being conducted by the Fair Work Commission.
  - 9) However, Restaurant & Catering Industrial are still seeking to have this matter determined by the Fair Work Commission before the part-day public holidays fall again in 2015.
  - 10) Restaurant & Catering Industrial would be seeking 2 days of hearing in Adelaide and be calling approximately 12 small business witnesses who have been forced to close their restaurants and cafes in previous years because of the excessive labour costs.
  - 11) The Fair Work Commission has previously indicated that it would be determining the issues concerning part-day public holidays in 2015 as previously stated by the Full Bench dealing with the originating application under s.160 of the Fair Work Act 2009:

*“We are confident that the public holiday aspect of the 4 yearly review will be completed well ahead of the Christmas/New Year period in 2015. This will enable the Commission to fully review and consider the part-day public holiday provisions in the context of the public holiday clauses, and other modern award provisions, more generally. The Commission would be in a position to confirm the part-day public holiday schedules or make any necessary amendments as part of the outcome of the 4 yearly review in a timely way.”<sup>1</sup>*
  - 12) Restaurant & Catering Industrial will be attending the Conference scheduled for 20 February 2015 to address the scope and timetable for dealing with the public holiday issues.

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<sup>1</sup> [2014] FWCFB 7830 Part-Day Public Holidays Decision @ para [12] Ross, J, Smith DP and Hampton C - 12 November 2014



FAIR WORK  
COMMISSION

## DRAFT DETERMINATION

### RESTAURANT INDUSTRY AWARD 2010

[MA000119]

Restaurant Industry

COMMISSION MEMBER

SYDNEY, 2014

A. Further to the decision [ ] FWCFB ] issued by the Full Bench of the Fair Work Commission on , the *Restaurant Industry Award 2010* is varied as follows:

1. By deleting Schedule F - 2014 Part Day Public Holidays.
2. By deleting clause 38 and inserting the following new clause 38 in lieu thereof:

#### **38. Public holidays**

- 38.1 Public holidays and rights are provided for in the NES.
- 38.2 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 the NES.
- 38.3 Full day public holidays provided under the NES shall be paid in accordance with clause 34.2 of this Award.
- 38.4 An employee (other than a casual) who works on a public holiday which is subject to substitution as provided for in the NES will be entitled to the benefit of the substitute day. If both days are worked, the public holiday penalties must be paid on one day chosen by the employee.
- 38.4 Where a part-day public holiday is declared or prescribed between 7.00pm and midnight on Christmas Eve (24 December) or New Year's Eve (31 December) the following will apply:
  - (a) Where an employee (including a casual employee) works any hours between 7.00pm and midnight they will be entitled to a part day public holiday penalty rate of 125% for those hours worked.
  - (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 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.
  - (c) A part-time employee or a full-time employee may by agreement with the employer work between 7.00PM and midnight at the ordinary hourly rates as set out in clause 20— Minimum wages, rather than the penalty rate prescribed in sub clause (a) provided that equivalent time off in lieu is provided to the employee for each hour worked.

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B. The variations to commence on \_\_\_\_\_ 2015.

BY THE COMMISSION