

20 July 2021

AM2020/103 AWARD FLEXIBILITY – HOSPITALITY

This analysis has been prepared by staff in the Agreements Team at the Fair Work Commission upon request of the President, Justice Ross.

Application to vary a Modern Award - Review of the draft determination lodged on 19 July 2021 by the Australian Hotels Association to vary the Hospitality Industry (General) Award 2020 [MA000009].

The Agreements Team has conducted a comparison of the 25 March 2021 Amended Draft Determination (last reviewed on 4 June 2021) against the 19 July application to vary the Hospitality Industry (General) Award 2020 [MA000009].

The Agreements Team discussion with the Australian Hospitality Association and the United Workers Union ('The Parties') was limited to the rates of pay and the parameters surrounding the loaded rates in the draft determination.

We confirm that the 19 July application to vary the Hospital Industry (General Award) 2020 is consistent with the previous draft determination reviewed 4 June by the Agreements team, other than the insertion of a 'Loaded Rate Percentage dollar value – casino gaming classifications' at K.6.2.

The Agreements Team flagged with parties on 4 June that they may wish to consider excluding Casino gaming employees as the original loaded rates did not appear to be high enough to ensure that employees would be advantaged on the loaded rate compared to the modelling conducted under the Modern Award.

Conclusion

The Agreements Team has reviewed the parameters, percentages, the loaded rates at K.6.1 and the loaded rates for Casino gaming employees at table K.6.2. The models in Annexures A - F demonstrate that the loaded rates will ensure that employees are not financially disadvantaged when working in accordance with the parameters in K6. The models in Annexures G - L demonstrate the same for Casino gaming employees.

Please note that this was conducted against Level 3 employees because this is the lowest rate of pay; the margin increases as the classifications and rates of pay increase. If further models for all classification levels are required, they can be provided. In conclusion, it is our view that both the rates in K.6.1 and K.6.2 result in employees earning more under the loaded rate when compared to the hourly rates and loadings applicable under the Hospitality Industry (General) Award 2020 when working within the parameters set out in K.6. We have not identified any issues in relation to the loaded rates and their parameters.

ANNEXURE A

A model of a Level 3 employee on the loaded rate (10.20%) working 40hrs Monday to Friday has been completed below.

Loaded Rate	\$24.16	Level 3 Loaded Rate	
	Hours	Loading	weekly total
Loaded Rate	40	100%	\$966.40
			\$0.00
Allowances	Amount	Value	
Allowance			\$0.00
Allowance			\$0.00
Annual Leave	Yes		\$64.07
Leave Loading	Yes		\$11.21
Totals	40.00 Hrs		\$1,041.69

Award Ordinary Rate	\$21.92	Level 3	
	Hours	Loading	weekly total
M-F Rate	38	100%	\$832.96
OT (1st 2 hours M-F)	2	150%	\$65.76
Allowances	Amount	Value	
Split Shift - Clause 26.14(b)(i)	5	\$2.90	\$14.50
Late Night Penalty (7pm - midnight M-F)	23	\$2.31	\$53.13
Annual Leave	Yes		\$64.07
Leave Loading	Yes		\$11.21
Totals	40.00 Hrs		\$1,041.64

Annexure B

A model of a Level 3 employee on the loaded rate (20.00%) working 45hrs Monday to Friday has been completed below.

Loaded Rate	\$26.30	Level 3 Loaded Rate	
Hours Loading weekly total			
Loaded Rate	45	100%	\$1,183.50
			\$0.00
			\$0.00
Allowances Amount Value			
Allowance			\$0.00
Allowance			\$0.00
Annual Leave	Yes		\$64.07
Leave Loading	Yes		\$11.21
Totals	45.00 Hrs		\$1,258.79

Award Ordinary Rate	\$21.92	Level 3	
Hours Loading weekly total			
M-F Rate	38	100%	\$832.96
OT (1st 2 hours M-F)	2	150%	\$65.76
OT (Thereafter M-F)	5	200%	\$219.20
Allowances Amount Value			
Split Shift - Clause 26.14(b)(i)	5	\$2.90	\$14.50
Late Night Penalty (7pm - midnight M-F)	20	\$2.31	\$46.20
Annual Leave	Yes		\$64.07
Leave Loading	Yes		\$11.21
Totals	45.00 Hrs		\$1,253.91

Annexure C

A model of a Level 3 employee on the loaded rate (16.95%) working 40hrs Monday to Saturday has been completed below.

Loaded Rate	\$25.64	Level 3 Loaded Rate	
Hours		Loading	weekly total
Loaded Rate	40	100%	\$1,025.60
			\$0.00
			\$0.00
Allowances	Amount	Value	
Allowance			\$0.00
Allowance			\$0.00
Annual Leave	Yes		\$64.07
Leave Loading	Yes		\$11.21
Totals	40.00 Hrs		\$1,100.89

Award Ordinary Rate	\$21.92	Level 3	
Hours		Loading	weekly total
M-F Rate	30	100%	\$657.60
Saturday	8	125%	\$219.20
OT (Sat)	2	200%	\$87.68
Allowances	Amount	Value	
Split Shift - Clause 26.14(b)(i)	5	\$2.90	\$14.50
Late Night Penalty (7pm - midnight M-F)	20	\$2.31	\$46.20
Annual Leave	Yes		\$64.07
Leave Loading	Yes		\$11.21
Totals	40.00 Hrs		\$1,100.47

Annexure D

A model of a Level 3 employee on the loaded rate (23.40%) working 45hrs Monday to Saturday has been completed below.

Loaded Rate	\$27.05	Level 3 Loaded Rate	
	Hours	Loading	weekly total
Loaded Rate	45	100%	\$1,217.25
			\$0.00
			\$0.00
Allowances	Amount	Value	
Allowance			\$0.00
Allowance			\$0.00
Annual Leave	Yes		\$64.07
Leave Loading	Yes		\$11.21
Totals	45.00 Hrs		\$1,292.54

Award Ordinary Rate	\$21.92	Level 3	
	Hours	Loading	weekly total
M-F Rate	35	100%	\$767.20
Saturday	3	125%	\$82.20
OT (Sat)	7	200%	\$306.88
Allowances	Amount	Value	
Split Shift - Clause 26.14(b)(i)	5	\$2.90	\$14.50
Late Night Penalty (7pm - midnight M-F)	20	\$2.31	\$46.20
Annual Leave	Yes		\$64.07
Leave Loading	Yes		\$11.21
Totals	45.00 Hrs		\$1,292.27

Annexure E

A model of a Level 3 employee on the loaded rate (26.85%) working 40hrs Monday to Sunday has been completed below.

Loaded Rate	\$27.81	Level 3 Loaded Rate	
	Hours	Loading	weekly total
Loaded Rate	40	100%	\$1,112.40
			\$0.00
			\$0.00
			\$0.00
Allowances	Amount	Value	
Allowance			\$0.00
Allowance			\$0.00
Annual Leave	Yes		\$64.07
Leave Loading	Yes		\$11.21
Totals	40.00 Hrs		\$1,187.69

Award Ordinary Rate	\$21.92	Level 3	
	Hours	Loading	weekly total
M-F Rate	20	100%	\$438.40
Saturday	10	125%	\$274.00
Sunday	8	150%	\$263.04
OT (Sun)	2	200%	\$87.68
Allowances	Amount	Value	
Split Shift - Clause 26.14(b)(i)	5	\$2.90	\$14.50
Late Night Penalty (7pm - midnight M-F)	15	\$2.31	\$34.65
Annual Leave	Yes		\$64.07
Leave Loading	Yes		\$11.21
Totals	40.00 Hrs		\$1,187.56

Annexure F

A model of a Level 3 employee on the loaded rate (30.80%) working 45hrs Monday to Sunday has been completed below.

Loaded Rate	\$28.67	Level 3 Loaded Rate	
Hours		Loading	weekly total
Loaded Rate	45	100%	\$1,290.15
			\$0.00
			\$0.00
			\$0.00
Allowances	Amount	Value	
Allowance			\$0.00
Allowance			\$0.00
Annual Leave	Yes		\$64.07
Leave Loading	Yes		\$11.21
Totals	45.00 Hrs		\$1,365.44

Award Ordinary Rate	\$21.92	Level 3	
Hours		Loading	weekly total
M-F Rate	25	100%	\$548.00
Saturday	10	125%	\$274.00
Sunday	3	150%	\$98.64
OT (Sun)	7	200%	\$306.88
Allowances	Amount	Value	
Split Shift - Clause 26.14(b)(i)	5	\$2.90	\$14.50
Late Night Penalty (7pm - midnight M-F)	15	\$2.31	\$34.65
Annual Leave	Yes		\$64.07
Leave Loading	Yes		\$11.21
Totals	45.00 Hrs		\$1,351.96

Annexure G – Casino Gaming Employees

A model of a Level 3 employee on the loaded rate (10.20%) working 40hrs Monday to Friday has been completed below.

Loaded Rate	\$25.45	Level 3 Loaded Rate	
	Hours	Loading	weekly total
Loaded Rate	40	100%	\$1,018.00
			\$0.00
Allowances	Amount	Value	
Allowance			\$0.00
Allowance			\$0.00
Annual Leave	Yes		\$67.49
Leave Loading	Yes		\$11.81
Totals	40.00 Hrs		\$1,097.31

Award Ordinary Rate	\$23.09	Level 3	
	Hours	Loading	weekly total
M-F Rate	38	100%	\$877.42
OT (1st 2 hours M-F)	2	150%	\$69.27
Allowances	Amount	Value	
Split Shift - Clause 26.14(b)(i)	5	\$2.90	\$14.50
Late Night Penalty (7pm - midnight M-F)	23	\$2.31	\$53.13
Annual Leave	Yes		\$67.49
Leave Loading	Yes		\$11.81
Totals	40.00 Hrs		\$1,093.63

Annexure H – Casino gaming employees

A model of a Level 3 employee on the loaded rate (20.00%) working 45hrs Monday to Friday has been completed below.

Loaded Rate	\$27.71	Level 3 Loaded Rate	
Hours		Loading	weekly total
Loaded Rate	45	100%	\$1,246.95
			\$0.00
			\$0.00
Allowances	Amount	Value	
Allowance			\$0.00
Allowance			\$0.00
Annual Leave	Yes		\$67.49
Leave Loading	Yes		\$11.81
Totals	45.00 Hrs		\$1,326.26

Award Ordinary Rate	\$23.09	Level 3	
Hours		Loading	weekly total
M-F Rate	38	100%	\$877.42
OT (1st 2 hours M-F)	2	150%	\$69.27
OT (Thereafter M-F)	5	200%	\$230.90
Allowances	Amount	Value	
Split Shift - Clause 26.14(b)(i)	5	\$2.90	\$14.50
Late Night Penalty (7pm - midnight M-F)	20	\$2.31	\$46.20
Annual Leave	Yes		\$67.49
Leave Loading	Yes		\$11.81
Totals	45.00 Hrs		\$1,317.60

Annexure I – Casino gaming employees

A model of a Level 3 employee on the loaded rate (16.95%) working 40hrs Monday to Saturday has been completed below.

Loaded Rate	\$27.00	Level 3 Loaded Rate	
Hours		Loading	weekly total
Loaded Rate	40	100%	\$1,080.00
			\$0.00
			\$0.00
Allowances	Amount	Value	
Allowance			\$0.00
Allowance			\$0.00
Annual Leave	Yes		\$67.49
Leave Loading	Yes		\$11.81
Totals	40.00 Hrs		\$1,159.31

Award Ordinary Rate	\$23.09	Level 3	
Hours		Loading	weekly total
M-F Rate	30	100%	\$692.70
Saturday	8	125%	\$230.90
OT (Sat)	2	200%	\$92.36
Allowances	Amount	Value	
Split Shift - Clause 26.14(b)(i)	5	\$2.90	\$14.50
Late Night Penalty (7pm - midnight M-F)	20	\$2.31	\$46.20
Annual Leave	Yes		\$67.49
Leave Loading	Yes		\$11.81
Totals	40.00 Hrs		\$1,155.97

Annexure J – Casino gaming employees

A model of a Level 3 employee on the loaded rate (23.40%) working 45hrs Monday to Saturday has been completed below.

Loaded Rate	\$28.50	Level 3 Loaded Rate	
Hours		Loading	weekly total
Loaded Rate	45	100%	\$1,282.50
			\$0.00
			\$0.00
Allowances	Amount	Value	
Allowance			\$0.00
Allowance			\$0.00
Annual Leave	Yes		\$67.49
Leave Loading	Yes		\$11.81
Totals	45.00 Hrs		\$1,361.81

Award Ordinary Rate	\$23.09	Level 3	
Hours		Loading	weekly total
M-F Rate	35	100%	\$808.15
Saturday	3	125%	\$86.59
OT (Sat)	7	200%	\$323.26
Allowances	Amount	Value	
Split Shift - Clause 26.14(b)(i)	5	\$2.90	\$14.50
Late Night Penalty (7pm - midnight M-F)	20	\$2.31	\$46.20
Annual Leave	Yes		\$67.49
Leave Loading	Yes		\$11.81
Totals	45.00 Hrs		\$1,358.00

Annexure K – Casino gaming employees

A model of a Level 3 employee on the loaded rate (26.85%) working 40hrs Monday to Sunday has been completed below.

Loaded Rate	\$29.29	Level 3 Loaded Rate	
Hours		Loading	weekly total
Loaded Rate	40	100%	\$1,171.60
			\$0.00
			\$0.00
			\$0.00
Allowances	Amount	Value	
Allowance			\$0.00
Allowance			\$0.00
Annual Leave	Yes		\$67.49
Leave Loading	Yes		\$11.81
Totals	40.00 Hrs		\$1,250.91

Award Ordinary Rate	\$23.09	Level 3	
Hours		Loading	weekly total
M-F Rate	20	100%	\$461.80
Saturday	10	125%	\$288.63
Sunday	8	150%	\$277.08
OT (Sun)	2	200%	\$92.36
Allowances	Amount	Value	
Split Shift - Clause 26.14(b)(i)	5	\$2.90	\$14.50
Late Night Penalty (7pm - midnight M-F)	15	\$2.31	\$34.65
Annual Leave	Yes		\$67.49
Leave Loading	Yes		\$11.81
Totals	40.00 Hrs		\$1,248.32

Annexure L – Casino gaming employees

A model of a Level 3 employee on the loaded rate (30.80%) working 45hrs Monday to Sunday has been completed below.

Loaded Rate	\$30.20	Level 3 Loaded Rate	
Hours		Loading	weekly total
Loaded Rate	45	100%	\$1,359.00
			\$0.00
			\$0.00
			\$0.00
Allowances	Amount	Value	
Allowance			\$0.00
Allowance			\$0.00
Annual Leave	Yes		\$67.49
Leave Loading	Yes		\$11.81
Totals	45.00 Hrs		\$1,438.31

Award Ordinary Rate	\$23.09	Level 3	
Hours		Loading	weekly total
M-F Rate	25	100%	\$577.25
Saturday	10	125%	\$288.63
Sunday	3	150%	\$103.91
OT (Sun)	7	200%	\$323.26
Allowances	Amount	Value	
Split Shift - Clause 26.14(b)(i)	5	\$2.90	\$14.50
Late Night Penalty (7pm - midnight M-F)	15	\$2.31	\$34.65
Annual Leave	Yes		\$67.49
Leave Loading	Yes		\$11.81
Totals	45.00 Hrs		\$1,421.50