

In the Fair Work Commission**Matter Number: AM 2020/103****Award Flexibility Retail Sector**

Suggested variations in respect of the General Retail Industry Award 2010

Introduction

1. Master Grocers Australia (MGA/TMA) is a registered employer association, that participated in the recent Workplace Relations Industrial Reform Groups, on behalf of the Council of Small Business Organisations of Australia (COSBOA), arranged by the Minister for Industrial Relations. The Hon. Christian Porter, Attorney General, in 2020. During the meetings of the Reform Groups, it became apparent that there is a need to alleviate the distressed condition of some awards and the General Retail Industry Award (GRIA) was nominated as one of these awards. The Minister has since requested that the Fair Work Commission (FWC) encourage and assist interested parties to identify measures, that could help relieve some of the complexities of the current wages system that have become burdensome, particularly for small businesses.
2. MGA/TMA welcomes the opportunity to provide suggestions to the FWC in respect of providing a system of loaded rates that MGA/TMA believes may assist employers who operate with the GRIA to conduct their businesses more efficiently and correctly. This would hopefully help employers to overcome some of the award complexities that are currently associated with their payroll systems.

Background

3. The Australian economy has been seriously damaged because of the COVID-19 pandemic and one of the industries that has been badly affected is the retail industry. As a result of the adverse effects on the lives of many retailers and their employees the Federal Government has sought the assistance of the FWC, to hopefully alleviate some of the problems. The Federal Attorney General has proposed the implementation of significant changes to the several of the awards, in particular the distressed aspects of the GRIA which will hopefully overcome several complexities and provide a needed simplified award system. It has been proposed that the option of loaded rates be introduced into the GRIA, to provide an easier optional method of payment for employers to administer, whilst ensuring that employees are paid their full and correct entitlements.

4. MGA/TMA submits that it would be helpful to implement a system of loaded rates into what has become known as a ‘distressed award.’ Therefore, in this submission MGA will concentrate specifically on the GRIA and provide examples of loaded rates arrangements that may be considered for implementation therein. We will also focus on how such loaded rates may be derived to the mutual benefit of employers and employees.
5. MGA/TMA submits that the proposal to introduce a system of loaded rates into the awards is not a new proposal and we know that the FWC expressed earlier views in 2013¹ that proposals to introduce loaded rates are viable, could prove beneficial to small businesses and can be implemented on the initiative of the Commission itself. There appears to be no legal impediment to the concept of loaded rates in awards, subject to assurances that no employee would be worse off resulting from any changes to the structure of payments for time worked. From the employer’s perspective, subject to it being a productive option, if there is a simpler method of calculating wages, that is not as prone to error or further cost, then the option to use a loaded rates method has merit.
6. MGA/TMA has carefully considered the option of adopting a ‘loaded rates’ system of wages payment on behalf of its members and sets out below in greater detail the reasons why MGA/TMA supports this proposal.

Why is the Retail Award categorised as a ‘distressed award’?

7. The Retail Award has been seriously affected by COVID 19. Many small retail businesses, including supermarkets have struggled to survive, especially those located in the major cities, many of whom rely on city workers to frequent their stores. There is a heavy reliance on the award system especially the GRIA and they have appreciated the lower increase of 1.75% in the Retail award this year and the delayed increase date of the wage rates to February 2021. However, there is no doubt that COVID 19 has dented employer and consumer confidence in the economy and there has been negative wage growth resulting from the pandemic. One of the solutions to revive the economy and inspire greater confidence is to diminish the fear of job loss and protect the wages of the current workforce. In 2020 after the FWC handed down its Annual Wage Review², the Attorney General and Minister for Industrial Relations, the Honourable Christian Porter said, in relation to the working industry groups that he commissioned to consider the award system, “...one of the award working groups we have commissioned is on award simplification for the awards in those types of industries- retail, tourism hospitality. Now many of those businesses tell us that these awards are, at once, the awards applicable to industries in most distress,

¹ 2013 FWCFB (330).

² FWC Annual Wage Review July 2020.

secondly the most complicated awards amongst the 120 odd awards that we have and thirdly that that complication impeded businesses’ abilities to employ more people”.³

8. The GRIA is no different to any other industrial award in that it provides a base rate and appropriate penalties at specific time and on specific days. However, the complications begin to emerge when the various categories of penalties are applied to the base rate, together with the times and days on which work is performed, and the calculations are also subject to differences depending on the employee’s age. The final rate can be calculated by working on the various commutations that need to be applied, according to days and times of work on those days, and additionally public holidays that frequently occur which also incur higher rates.

The burden of compliance

9. Because of the complexity of the various permutations that are required, the most certain method of obtaining a correct rate will usually require the assistance of skilled payroll personnel. However, there are those who do not necessarily have the financial resources to engage qualified bookkeepers and there is risk that unintentional errors may occur. Therefore, the result is one where employers are locked into a time- consuming process, with the constant risk of an error, albeit unintentional, being made in the final calculation of the appropriate rate.
10. The FWC is not unaware of the problems associated with the complexities of the evolution of the award payments system and has on several occasions expressed the view that a ‘loaded rate’ may be a suitable approach to deal with any complexities due to the various adjustments that have been made to rates in the past. However, it has also been emphasised by the Commission that no employee must ever be financially worse off if “loaded rates’ were to be implemented in a modern award. This is endorsed by MGA/TMA.
11. The Commission has in the past pointed out that there is “no legislative barrier to the inclusion of terms about loaded rates in modern awards”⁴ The Commission has on several occasions provided opportunities to industry associations to consider the inclusion of loaded rates in the Retail award but to date there has been an unenthusiastic response.
12. However, the difficulties of the past year, sparked initially by the hardship resulting from the bushfires in December 2019 and January 2020, followed by the devastating effects of the coronavirus pandemic throughout 2020, have caused many retailers to look for opportunities that may be beneficial to their recovery process. The effects on small retail

³ <https://www.attorneygeneral.gov.au/media/transcripts/doorstop/cpo-perth-19-June-2020>.

⁴ Fair Work Commission -Loaded rates- 10 Dec 2020- Legislative Framework p2

businesses have been devastating. It has been estimated that 92% of small retail businesses are in a distressed state, with medium-sized businesses being adversely affected to a lesser extent, and larger businesses managing to survive and commence a slow recovery. It appears that not all businesses therefore would wish to take advantage of a 'loaded rates' system should it be introduced into the Retail Award, but the option for small to medium businesses that have suffered greater 'distress' it would certainly be advantageous.

How might a system of 'loaded rates' operate in the GRIA?

13. A loaded rate could be used to advantage in a small business where the rosters are generally arranged in a regular pattern. This would be mainly due to a shop being open for a specified number of hours each day covered by permanent employees who were scheduled to work set rosters each week. Casual employees are generally utilised in smaller businesses where the hours are irregular. but these rates necessitate a higher rate of payment. However, there is no reason why a loaded rate cannot be implemented for irregular hours for shops where the hours may change each day over several days including late night and Saturday.

14. The following are suggested loaded rates for permanent and casual employees for work performed on the times specified based on the GRIA rates effective as from 1 February 2021:

DAY RATES

Permanent loaded rate (Level 1) for work on Monday to Friday, from 6am to 5pm (where an employee is employed early morning and during the day)

Includes:	
<ul style="list-style-type: none"> • base rate for Monday to Friday, and • penalty prior to 7.00am. 	
Calculation (averaged over 11 hours)	
Base rate for Monday to Friday	= \$21.78 x 10 hours = \$217.80
Penalty prior to 7.00am	= \$32.67 x 1 hour = \$32.67
Total	= \$250.47 divided by 11 hours
Loaded rate	= \$22.77 per hour

Casual loaded rate (Level 1) for work on Monday to Friday, from 6am to 5pm (where an employee is employed early morning and during the day)

Includes:	
<ul style="list-style-type: none"> casual base rate for Monday to Friday, and casual penalty prior to 7.00am. 	
Calculation (averaged over 11 hours)	
Casual base rate for Monday to Friday	= \$27.23 x 10 hours = \$272.30
Casual Penalty prior to 7.00am	= \$38.12 x 1 hour = \$38.12
Total	= \$310.42 divided by 11
Loaded rate	= \$28.22 per hour

EVENING RATES

Permanent loaded rate (Level 1) for work on Monday to Friday, from 12pm to 9pm (where an employee is employed during the day and in the evening)

Includes:	
<ul style="list-style-type: none"> base rate for Monday to Friday, and penalty after 6.00pm. 	
Calculation (averaged over 9 hours)	
Base rate for Monday to Friday	= \$21.78 x 6 hours = \$130.68
Penalty after 6.00pm	= \$27.23 x 3 hours = \$81.69
Total	= \$212.37 divided by 9 hours
Loaded rate	= \$23.60 per hour

Casual loaded rate (Level 1) for work on Monday to Friday, from 12pm to 9pm (where an employee is employed during the day and in the evening)

Includes:	
<ul style="list-style-type: none"> casual base rate for Monday to Friday, and casual penalty after 6.00pm. 	

Calculation (averaged over 9 hours)	
Casual base rate for Monday to Friday	= \$27.23 x 6 hours = \$163.38
Casual penalty after 6.00pm	= \$31.58 x 3 hours = \$84.74
Total	= \$258.12 divided by 9 hours
Loaded rate	= \$28.68 per hour

WEEKEND RATES

Option #1 (combining Saturday and Sunday)

Permanent loaded rate (Level 1) for work on Saturday, from 6am to 3pm and Sunday, from 8am to 5pm (where an employee is employed early morning and during the day)

Includes:	
<ul style="list-style-type: none"> base rate for Saturday and Sunday, and penalty prior to 7.00am on Saturday and penalty prior to 9.00am on Sunday 	
Calculation (averaged over 18 hours)	
Base rate for Saturday	= \$27.23 x 8 hours = \$217.84
Penalty prior to 7.00am	= \$32.67 x 1 hour = \$32.67
Base rate for Sunday	= \$32.67 x 8 hours = \$261.36
Penalty prior to 9.00am	= \$43.56 x 1 hour = \$43.56
Total	= \$555.43 divided by 18 hours
Loaded rate	= \$30.86 per hour

Casual loaded rate (Level 1) for work on Saturday, from 6am to 3pm and Sunday, from 8am to 5pm (where an employee is employed early morning and during the day)

Includes:	
<ul style="list-style-type: none"> base rate Saturday and Sunday, and penalty prior to 7.00am on Saturday and penalty prior to 9.00am on Sunday 	
Calculation (averaged over 18 hours)	
Casual base rate for Saturday	= \$32.67 x 8 hours = \$261.36

Casual penalty prior to 7.00am	= \$38.12 x 1 hour = \$38.12
Casual base rate for Sunday	= \$38.12 x 8 hours = \$304.96
Casual penalty Prior to 9.00am	= \$43.56 x 1 hour = \$43.56
Total	= \$648 divided by 18 hours
Loaded rate	= \$36.00 per hour

Option #2 (separating Saturday and Sunday)

Permanent loaded rate (Level 1) for work on Saturday, from 6am to 3pm (where an employee is employed early morning and during the day)

Includes:	
<ul style="list-style-type: none"> • base rate Saturday, and • penalty prior to 7.00am on Saturday. 	
Calculation (averaged over 9 hours)	
Base rate for Saturday	= \$27.23 x 8 hours = \$217.84
Penalty prior to 7.00am	= \$32.67 x 1 hour = \$32.67
Total	= \$250.51 divided by 9 hours
Loaded rate	= \$27.83 per hour

Casual loaded rate (Level 1) for work on Saturday, from 6am to 3pm (where an employee is employed early morning and during the day)

Includes:	
<ul style="list-style-type: none"> • base rate for Saturday, and • penalty prior to 7.00am. 	
Calculation (averaged over 9 hours)	
Casual base rate for Saturday	= \$32.67 x 8 hours = \$261.36
Casual penalty prior to 7.00am	= \$38.12 x 1 hour = \$38.12
Total	= \$299.42 divided by 9 hours
Loaded rate	= \$33.27 per hour

Permanent loaded rate (Level 1) for work on Sunday, from 8am to 5pm (where an employee is employed early morning and during the day)

Includes:	
<ul style="list-style-type: none"> • base rate for Sunday, and • penalty prior to 9.00am on Sunday. 	
Calculation (averaged over 9 hours)	
Base rate for Sunday	= \$32.67 x 8 hours = \$261.36
Penalty prior to 9.00am	= \$43.56 x 1 hour = \$43.56
Total	= \$304.92 divided by 9 hours
Loaded rate	= \$33.88 per hour

Casual loaded rate (Level 1) for work on Sunday, from 8am to 5pm (where an employee is employed early morning and during the day)

Includes:	
<ul style="list-style-type: none"> • base rate for Sunday, and • penalty prior to 9.00am. 	
Calculation (averaged over 9 hours)	
Casual base rate for Sunday	= \$38.12 x 8 hours = \$304.96
Casual penalty prior to 9.00am	= \$43.56 x 1 hour = \$43.56
Total	= \$348.52 divided by 9 hours
Loaded rate	= \$38.72 per hour

Junior rates and Levels 2 – 6 to be calculated on the Level 1 Loaded rate.

Public holiday rates remain as they are currently.

The above calculations do not provide for any incidental allowances that would be paid separately.

Conclusion

In any calculation for a ‘loaded rate’ care must be taken to ensure that the method of calculation is carefully determined, consideration needs to be given to whether the base rate might change at various times and whether any penalties are applicable at specific times. A rigorous approach needs to be taken no matter what method of calculation is applied.

There is no doubt that the use of ‘loaded rates’ may be suited to the specific needs of some businesses. However, there are businesses, mainly larger businesses, that are satisfied that their wage rates and their methods of calculation are satisfactory but smaller businesses would welcome an easier method of calculation.

MGA/TMA thanks the FWC for the opportunity to make this short submission on this matter and welcomes the opportunity to discuss and implement any further opportunities to simplify the wages system on behalf of our members.

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