



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, 15 JANUARY 2016

*4 yearly review of modern awards – penalty rates – amendment to the directions –
publication of further documents to the penalty rates webpage*

[1] Since January 2014, the Fair Work Commission (the Commission) has been conducting a four yearly review of all modern awards (the Review) in accordance with s.156 of the *Fair Work Act 2009* (the Act).

[2] The conduct of the Review has been open and transparent, in accordance with s.577 of the Act. The Commission’s website has been used extensively to ensure that information about the Review is publicly accessible in order to facilitate participation in the Review by any interested person (which includes employers, employees, organisations, governments, individuals and representatives). Interested persons were encouraged to subscribe to the award matters notification service to keep informed about the Review.

[3] Following the publication of an [Issues Paper](#) on 24 January 2014, and a public conference convened on 5 February 2014, the Commission invited any interested persons to make submissions relating to the conduct of the Review including any claims they wished to pursue which affected multiple awards (known as “common issues”).

[4] One of the common issues confirmed as a result of the public consultation process¹ involved applications by a number of organisations to vary certain penalty rates in a range of hospitality and retail awards.²

[5] The awards affected by the applications to vary are as follows³:

Award title	Award code
<i>Hospitality group</i>	
<i>Hospitality Industry (General) Award 2010</i>	MA000009
<i>Registered and Licensed Clubs Award 2010</i>	MA000058
<i>Restaurant Industry Award 2010</i>	MA000119

Retail group

Fast Food Industry Award 2010

[MA000003](#)

General Retail Industry Award 2010

[MA000004](#)

Hair and Beauty Industry Award 2010

[MA000005](#)

Pharmacy Industry Award 2010

[MA000012](#)

[6] Following extensive consultation, the scope of the penalty rates matter was determined and a timetable established for a specially constituted Full Bench to hear evidence and submissions. All of the directions and schedule of hearings have been published on a dedicated [Penalty Rates page](#) on the Commission's website

[7] Materials were filed by the parties in the first half of 2015 and hearings were conducted in September, October, November and December 2015. This has involved receiving evidence from over 125 witnesses including business owners and operators, employees and a number of expert witnesses.

[8] The Penalty Rates common issue proceeding is nearing completion and directions have been issued for the filing of final submissions. This Statement makes an amendment to those directions and provides an update regarding publication of documents to the [Penalty Rates page](#). The amendment to the directions provides a further opportunity for any interested person who is not a party to the proceedings to put forward a position (and file material in support of their position) in relation to varying the penalty rate provisions in the above awards.

Further filing date

[9] The Commission amends the Directions which have been issued in this matter, by inserting the following:

Any interested person who is not a party to the proceedings may put forward a position (and file material in support of their position) in relation to varying the penalty rate provisions in the above awards by no later than 4:00pm **Wednesday 17 February 2016**.

[10] The amended directions also provide an opportunity for the employer and union parties to the proceeding to reply to any such material as part of their final submissions.

[11] The amended Further Revised Directions are attached.

[12] Material provided in response to these directions will generally be published to the Commission's [Penalty Rates page](#).

[13] All material should be sent to amod@fwc.gov.au.

Consolidated list of exhibits and list of relevant additional materials

[14] The Commission will release a consolidated list of exhibits (the consolidated list) in relation to the Penalty rates case. The consolidated list will be a complete record of all

evidence, as tendered, in the penalty rates case with cross-references to transcript (which will subsequently be made publically available).

[15] Parties who have tendered documents during proceedings will have an opportunity to review the documents proposed to be published to ensure the contents reflect the position regarding confidential and inadmissible material agreed or determined in the proceeding and are in accordance with any confidentiality orders issued. The parties have until **Wednesday 27 January 2016** to make comments or submissions in relation to these documents. After consideration has been given to the comments and submissions filed, the consolidated list and transcripts will be published on the [Penalty rates page](#) on the Commission's website.

[16] The Commission will also shortly publish to the website a research reference list to assist parties to the proceedings.

[17] Part I of the research reference list will contain references that have been directly cited in the substantive evidence of expert witnesses and the submissions of the parties up to 21 December 2015. Part I of the research reference list is not exhaustive and does not contain all materials referred to by the parties.

[18] Part II of the research reference list will contain further publications identified by staff of the Commission which may be of assistance to those wishing to make submissions.

[19] As advised during the course of the proceedings on 15 December 2015, if anyone wishes to comment on the research reference list they should do so in their submissions to the Penalty Rates Case.

[20] As detailed above, material in relation to the penalty rates case including claims made, outline of submissions, evidence and reports can be found on the [Penalty Rates page](#) on the Commission's website.

PRESIDENT

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¹ See [Statement](#) issued 6 February 2014, [Issues Paper](#) issued 24 February 2014, [Statement](#) issued 28 November 2014 and [Statement](#) issued 17 December 2014.

² Details of the claims made are available on the [Penalty rates page](#) of the Commission's website.

³ A claim made by the Australian Federation of Employers and Industry (AFEI) and the Australian Amusement, Leisure and Recreation Association Inc. re the *Amusement, Events and Recreation Award 2010* was [withdrawn](#) on 26 June 2015; a claim made by AFEI and the Dry Cleaning Institute of Australia re the *Dry Cleaning and Laundry Industry Award 2010* was [withdrawn](#) on 12 August 2015.



FURTHER REVISED DIRECTIONS

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COMMISSIONER HAMPTON
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MELBOURNE, 15 JANUARY 2016

These Directions deal with the review of penalty rates in the following awards in the hospitality and retail sectors:

Award title	Award code
<i>Hospitality group</i>	
<i>Hospitality Industry (General) Award 2010</i>	MA000009
<i>Registered and Licensed Clubs Award 2010</i>	MA000058
<i>Restaurant Industry Award 2010</i>	MA000119
<i>Retail group</i>	
<i>Fast Food Industry Award 2010</i>	MA000003
<i>General Retail Industry Award 2010</i>	MA000004
<i>Hair and Beauty Industry Award 2010</i>	MA000005
<i>Pharmacy Industry Award 2010</i>	MA000012

The Commission directs as follows:

1. On or before **4.00pm on Wednesday 3 February 2016** each employer party and any interested person supporting the existing claims to change penalty rate provisions in the above awards, is to file final written submissions.
2. On or before **4.00pm on Wednesday 17 February 2016** any interested person who is not a party to the proceedings may put forward a position (and file material in support of their position) in relation to varying the penalty rate provisions in the above awards.

3. On or before **4.00pm on Wednesday 16 March 2016** each union party and any interested person opposing the change to penalty rate provisions in the above awards, is to file final written submissions.
4. On or before **4.00pm on Wednesday 30 March 2016**, each employer party and any interested person may file final written submissions in reply.
5. The matter will be listed for hearing before a Full Bench from **Monday 11 April 2016 to Friday 15 April 2016** (inclusive).
6. Leave is granted to apply generally.
7. All material should be sent to amod@fwc.gov.au.

PRESIDENT