

OUTLINE OF SUBMISSION OF AUSTRALIAN INDUSTRY GROUP
RELATING TO PUBLIC HOLIDAYS

1. By its decision published on 23 February 2017 (see [2017] FWCFB 1001 (the “**Penalty Rates Decision**”)), the Full Bench determined to reduce from 1 July 2017 the existing public holiday penalty rates in the *Fast Food Industry Award 2010* (the “**Fast Food Award**”) for a full time and part-time employee from 250 per cent to 225 per cent (see Penalty Rates Decision at [63], [1957], [1980]) and for a casual employee from 275 per cent to 250 per cent (see Penalty Rates Decision at [63], [1979], [1980]).
2. By its decision published on 17 March 2017, the Full Bench reiterated its intent to reduce from 1 July 2017 the existing public holiday penalty rates (see [2017] FWCFB 1551 at [11]) and referred to its plan to publish draft determinations to give effect to the reductions (see [2017] FWCFB 1551 at [14]).
3. Later on 17 March 2017, the Full Bench circulated to parties its draft determination with an operative date of 1 July 2017 for the reduction in the public holiday penalty rates.
4. Subject to some minor drafting changes set out in Attachment A, Ai Group submits that the Full Bench should make the determination in the form of the draft determination.
5. Ai Group submits in particular that the Full Bench should make the determination with effect from 1 July 2017 as:
 - (a) First, the Full Bench has nominated on two occasions 1 July 2017 as the operative date (see Penalty Rates Decision at [2025] and [2017] FWCFB 1551 at [11]);
 - (b) Secondly, the reduction in the public holiday penalty rate has a limited impact on employees (in that there are typically only ten to thirteen public holidays in each State or Territory (see section 115 of the FW Act) (and thus public holidays do not occur as regularly as Sunday work)) and an employee has a limited right to refuse to work on a public holiday in certain circumstances (see section 114 of the FW Act; see also Penalty Rates Decision at [1955])), with the consequence that there is no need for a delayed introduction in, or a transitional arrangement for, the reduction in public holiday penalty rates;

- (c) Thirdly, an operative date of 1 July 2017 is consistent with the introduction of other variations to the Fast Food Award, including the variation to the late night penalty (see [2017] FWCFB 1551 at [11]), a consistency emphasised by the SDA in its prior submissions (see [2017] FWCFB 1551 at [11]);
 - (d) Fourthly, an absence of a transitional arrangement is consistent with the “need to ensure a simple” and “easy to understand” modern award system (section 134(1)(g) and [2017] FWCFB 1551 at [4]), particularly in light of obligations imposed on employers flowing from the variation in the number and timing of days recognised as public holidays and the specification of additional public holidays (see Penalty Rates Decision at [1898], [1905]);
 - (e) Fifthly, a transitional arrangement for the reductions in the public holiday penalty rates would increase the “regulatory burden” (and the “employment costs”) of the Fast Food Award (compare section 134(1)(f) of the FW Act);
 - (f) Sixthly, a delayed introduction of or a transitional arrangement for the reductions in the public holiday penalty rates would postpone the achievement of fair and relevant public holiday penalty rates (see Penalty Rates Decision at [1948]) and defer the reduction in the self-evident employment costs associated with the higher existing rates (see Penalty Rates Decision at [1935]); and
 - (g) Seventhly, a delayed introduction of or a transitional arrangement obtaining of the benefits of additional employment and the other positive effects on business flowing from the reductions (see Penalty Rates Decision at [1933], [1956]).
6. Ai Group opposes any endeavour to re-open or to set aside the Penalty Rates Decision, including on the reductions in the public holiday penalty rates.

27 March 2016

Attachment A

- A1. The Draft Determination has the phrase “*for hours worked on a public holiday or substituted day*” applying to full-time or part-time employees, but not to a casual employee.
- A2. Ai Group submits that the phrase should apply to all classes of employees.
- A3. Ai Group proposes that clause 30.3 read:
 - 30.3 An employer must pay a full-time or part-time employee at the rate of 225% of the minimum hourly rate for hours worked on a public holiday or substituted day. The rate for a casual employee is 250% of the minimum hourly rate (inclusive of the casual loading) for hours worked on a public holiday or substituted day. (underlining added)