

FOUR YEARLY REVIEW OF MODERN AWARDS
PENALTY RATES

**COMMENTS OF THE AUSTRALIAN RETAILERS ASSOCIATION, NATIONAL
RETAIL ASSOCIATION AND MASTER GROCERS AUSTRALIA
(THE RETAIL ASSOCIATIONS) ON *GENERAL RETAIL INDUSTRY AWARD 2010*
DRAFT DETERMINATIONS**

1. The Fair Work Commission (**Commission**), on 7 June 2017 issued Draft Determinations giving effect to the Decision in the Penalty Rates Common Issue (**Penalty Rates Decision**). The Commission invited parties to comment on those Draft Determination on or before 15 June 2017. The Retail Associations set out below their comments on the Draft Determination relevant to the *General Retail Industry Award 2010* (**GRIA**).
2. The Retail Associations have identified two issues with the Draft Determination. The first of these is that the way the additional Sunday and public holiday rates are expressed is not consistent with the way other additional rates within the GRIA are expressed. The Evening and Saturday penalty rates under the GRIA are expressed as additional payments (a permanent employee working those times is entitled to an additional payment of 25%). The Draft Determination expresses the penalties as a whole payment (a permanent employee working on a Sunday will be paid 195% of the minimum hourly rate).
3. The Retail Associations understand, however, that the Draft Determination may be structured so as to reflect the Plain Language Drafting process being undertaken in relation to a number of Modern Awards, and which the GRIA will be taken through in the future. While this will, once the process has been completed, resolve the issue with the Draft Determination as currently structured, it does not deal with the inconsistency that will exist between the date of a Final Determination taking effect and the completion of the Plain Language process for the GRIA.

4. The second issue is that the terminology used in the Draft Determination with respect to the reference point for the additional penalty is inconsistent with terminology elsewhere in the GRIA and is uncertain.
5. The Draft Determination references the penalty against the “minimum hourly rate”. The term “minimum hourly rate” is not defined in the GRIA, and does not appear anywhere else in the award. Again, the Retail Associations understand that the term will be included in the GRIA as part of the Plain Language process. Until that process is completed, however, the structure of the Draft Determination will create significant uncertainty. As an example, on the draft terminology, a retail employer could conclude that the minimum hourly rate means the lowest hourly rate in the GRIA. This could lead that employer to pay a Retail Employee Level 6 a rate of pay on a Sunday or public holiday that is the relevant penalty calculated against the rate for a Retail Employee Level 1.
6. It is vital that employers and employees have a clear understanding of their rights and obligations under the GRIA. For that reason the Retail Associations submit that the Draft Determination should reflect the terminology in the GRIA as it now stands. This terminology can then be amended during the Plain Language process. The Retail Associations have set out below the operative components of a Final Determination which will eliminate the issues with the Draft Determination identified above.

A. Further to the decisions issued by the Fair Work Commission on 23 February 2017, 17 March 2017 and 5 June 2017, the above award is varied as follows:

1. By deleting clause 29.4(c) and inserting the following:

(c) Sunday work

(i) From 1 July 2017 to 30 June 2018

A penalty payment of an additional 95% loading will apply for all hours worked on a Sunday. This penalty payment also applies to casual employees instead of the casual loading in clause 13.2.

(ii) From 1 July 2018 to 30 June 2019

A penalty payment of an additional 80% loading will apply for all hours worked on a Sunday by a permanent employee. The penalty payment of an additional 85% will apply to a casual employee, inclusive of the casual loading in clause 13.2.

(iii) From 1 July 2019 to 30 June 2020

A penalty payment of an additional 65% loading will apply for all hours worked on a Sunday by a permanent employee. The penalty payment of an additional 75% will apply to a casual employee, inclusive of the casual loading in clause 13.2.

(iv) From 1 July 2020

A penalty payment of an additional 50% loading will apply for all hours worked on a Sunday by a permanent employee. The penalty payment of an additional 75% will apply to a casual employee, inclusive of the casual loading in clause 13.2.

2. By deleting clause 29.4(d)(i) and inserting the following:

- (i)** *Work on a public holiday must be compensated by payment at the rate of an additional 125% (150% for casual employees, inclusive of the casual loading in clause 13.2).*

15 June 2017