

## AM 2014/93

### *Submission of the Shop Distributive and Allied Employees' Association*

#### Re: Draft Determination Public Holidays

1. The Shop Distributive and Allied Employees' Association (SDA) makes the following submission concerning the Public Holiday draft determinations issued by FWC.
2. No formal direction or statement has been issued by the FWC, but a note contained in an FWC email subscription was issued to subscribers which stated :

*Further to the Decisions [\[2017\] FWC FB 1001](#) and [\[2017\] FWC FB 1551](#), the following draft determinations have been published on the Commission's website:*

- *Fast Food Industry Award 2010 [MA000003] - [draft determination](#)*
- *General Retail Industry Award 2010 [MA000004] - [draft determination](#)*
- *Hospitality (General) Industry Award 2010 [MA000009] - [draft determination](#)*
- *Pharmacy Industry Award 2010 [MA000012] - [draft determination](#)*
- *Restaurant Industry Award 2010 [MA000119] - [draft determination](#)*

*In accordance with paragraph [14] of the decision of 17 March 2017, interested parties are invited to comment on the draft determinations before they are finalised. Written submissions should be sent to [amod@fwc.gov.au](mailto:amod@fwc.gov.au) by 4.00 pm on Monday, 27 March 2017.*

3. The SDA has two issues to raise with the draft determinations which are detailed below.

#### **Operative Date issue**

4. The SDA on March 24th filed a submission in respect of transition of penalty rates in the various awards. The SDA relies upon these submissions in relation to the operation of the decision, the operative date of these determination and the question of phasing in the arrangement.
5. The SDA would therefore seek that these draft determinations are not finalised and issued prior to the hearings dealing with these other submissions which are scheduled for early May.

#### **Phrasing of the provisions**

6. The draft determinations in the Fast Food Industry Award (FFIA), General Retail Industry Award (GRIA) and the Pharmacy Industry Award (PIA) are the ones which the SDA provides the following submission on. These are limited to purely the phrasing of the clauses and not the issue concerning operative date etc.

7. The proposed wording in each of the 3 draft determinations has identical phrasing in each, which is a completely different wording to the 3 current award clauses. The SDA opposes any departure from the current phrasing which appears in the 3 awards.
8. The draft determinations introduce a concept of 'minimum hourly rate'. This is a foreign and totally alien concept in the 3 awards. Nowhere in the awards is such a term used.
9. Changing the wording at this point will add confusion to the clauses being applied to the workforce. It could cause underpayments being made. One interpretation is that an employee on a Level 3 rate could be paid the award minimum rate of level 1 for a Public Holiday. This is not the intent of the FWC decision the SDA believes, but the wording makes this a possibility.
10. The use of the term 'minimum hourly rate' is a term which has been debated in awards that have been considered in the 4 Yearly Review proceedings where an exposure draft has been issued. This has then led to various outcomes as to whether the term is applied or another appropriate term is used instead.
11. The 3 awards are still being processed through the exposure draft stage, (The GRIA has not begun) and as such the SDA would propose that the wording for the clauses should remain the same as in the existing awards. The appropriate time to review the wording or phrasing is in the exposure draft process.
12. Any change concerning consistency of wording, introducing new concepts etc. can all be part of the exposure draft stage.
13. The appropriate wording for the draft determinations based on the current award wording is as follows:

**FFIA**

- 30.3** Work on a public holiday must be compensated by payment at the rate of 225% (250% for casual employees).

**GRIA**

- (i)** Work on a public holiday must be compensated by payment at the rate of an additional 125%.

**PIA**

- 31.3** Work on a public holiday must be compensated by payment at the rate of 225% (casuals 250%) of the minimum rate.

**27 March 2017**