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**Our Ref:** 20140500

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The Associate to President Ross  
Fair Work Commission

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Dear Associate

**4 YEARLY REVIEW OF MODERN AWARDS - GROUP 3 AND 4 AWARDS - PENALTY RATES  
AM 2014/305 AND OTHERS**

- 1.1 We act for Australian Business Industrial (**ABI**), the New South Wales Business Chamber Limited (**NSWBC**) and the Hair & Beauty Australia Industry Association (**HABA**) in these matters.
- 1.2 We refer to the Statement issued in the above proceedings on 17 December 2014.
- 1.3 NSWBC, ABI and HABA intend to pursue variations to penalty rate clauses in certain awards in these matters.

**2. DETERMINATIONS**

2.1 Attached are draft determinations for the following awards:

- (a) *General Retail Award 2010*;
- (b) *Restaurant Industry Award 2010*; and
- (c) *Hair and Beauty Industry Award 2010*.

2.2 The draft determinations seek to vary how Sundays and Public Holidays are paid.

**3. EXPERT EVIDENCE**

3.1 ABI and NSWBC will be calling two experts witnesses in relation to the *General Retail Industry Award 2010* and the *Restaurant Industry Award 2010*.

3.2 The experts are:

- (a) Professor Phil Lewis, Professor of Economics and Director of the Centre for Labour Market Research (CLMR) at the University of Canberra; and
- (b) Professor John Rose, Professor at the University of South Australia and Director of Research at the Institute for Choice and Research.

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- 3.3 It is not entirely clear whether their evidence will be considered "common" as it will focus on the retail and restaurant sectors. However Professor Lewis' evidence will likely go to some general principles of labour economics.
- 3.4 The nature of the evidence from Professor Rose will be social based research concerning the use, preferences and value of time (focussed purely on persons covered by the *General Retail Industry Award 2010* and the *Restaurant Industry Award 2010*).
- 3.5 Given what is involved in preparing this and as it straddles both the hospitality stream and retail stream we would seek to file this on 10 August 2015 when the employer evidence is due in the retail industry stream.

Should you have any queries in relation to this correspondence, please do not hesitate to contact us.

Yours faithfully

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# DRAFT DETERMINATION

*Fair Work Act 2009*  
Part 2-3, Div 4 – 4 Yearly reviews of modern awards

## **General Retail Industry Award 2010** [MA000004]

Retail industry

COMMISSION MEMBER SYDNEY, XX YYY 2015

*Review of modern awards to be conducted.*

Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2014/270, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *General Retail Industry Award 2010* be varied as follows:

[1] By amending clause 29.4(c) as follows:

A penalty payment of an additional ~~100~~ 50% 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.

[2] By amending clause 29.4(d)(i) as follows:

Work on a public holiday (~~other than by a casual~~) must be compensated by payment at the rate of an additional ~~150%~~ 100%.

[3] The determination shall operate on and from XX YYY 2015.

BY THE COMMISSION

# DRAFT DETERMINATION

*Fair Work Act 2009*  
Part 2-3, Div 4 – 4 Yearly reviews of modern awards

## **Hair and Beauty Industry Award 2010** [MA000005]

Hair and Beauty industry

COMMISSION MEMBER SYDNEY, XX YYY 2015

*Review of modern awards to be conducted.*

Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2014/271, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Hair and Beauty Industry Award 2010* be varied as follows:

[1] By amending clause 13.3 as follows:

For all work performed outside the hours in clause 28.2, ~~except Sundays~~, a casual employee will be paid the ordinary hourly rate for a full-time employee in this award plus 50%. ~~For Sundays, the additional loading will be 100%.~~

[2] By deleting clause 31.2(c) and inserting:

A 50% loading will apply for all hours of work for full-time and part-time and casual employees on a Sunday.

[3] By deleting clause 35.2.

[4] By deleting clause 35.3 and inserting a clause numbered 35.2 as follows:

**35.2** Work on a public holiday for full-time and part-time employees must be compensated by:

- (a) payment at the rate of double time; or
- (b) the employee being paid at their ordinary rate for working on the public holiday and in addition receiving a paid day off to be taken at a mutually agreed time and paid at the employee's ordinary rate.

[5] By inserting a new clause numbered 35.3 as follows:

**35.3** Work on a public holiday for casual employees must be compensated by payment at the casual employee's ordinary rate.

[6] The determination shall operate on and from XX YYY 2015.

BY THE COMMISSION

# DRAFT DETERMINATION

*Fair Work Act 2009*  
Part 2-3, Div 4 – 4 Yearly reviews of modern awards

## Restaurant Industry Award 2010 [MA000119]

Retail industry

COMMISSION MEMBER SYDNEY, XX YYY 2015

*Review of modern awards to be conducted.*

Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2014/284, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Restaraunt Industry Award 2010* be varied as follows:

[1] By amending the table at clause 34.1 as follows:

Type of Employment	Monday to Friday	Saturday	Sunday	Public holidays
%	%	%	%	%
Full-Time and part-time	100	125	150	<del>250</del> 200
Casual Introductory Level, Level 1, Level 2 (inclusive of casual 25% loading)	125	150	150	<del>250</del> 125
Casual Level 3 to Level 6 (inclusive of casual 25% loading)	125	150	175	<del>250</del> 125

[2] By amending clause 34.4(c) as follows:

- (c) Employees (other than casual employees) who work on a prescribed holiday may, by agreement, perform such work at a rate of ~~+50~~ 100% of the relevant minimum wage in clause 20—Minimum wages, rather than

the penalty rate prescribed in clause 34.1, provided that equivalent paid time is added to the employee's annual leave or one day instead of such public holiday will be allowed to the employee during the week in which such holiday falls. Provided further that such holiday may be allowed to the employee within 28 days of such holiday falling due.

[3] The determination shall operate on and from XX YYY 2015.

BY THE COMMISSION