AM2014/305—Hospitality Industry (General) Award 2010

Application to vary the Hospitality Industry (General) Award 2010 [MA000009] by:

- Australian Hotels Association (AHA) and Accommodation Association of Australia (AAA) in submission and draft determination of 13 February 2015

The employer parties seek the following changes to the Hospitality Industry (General) Award 2010

Pending the outcome of its application to amend the coverage of the Hospitality Industry (General) Award 2010 regarding catering businesses, Restaurant and Catering Industrial may seek to amend the public holiday penalty rate for full-time and part-time employees per its outline of submissions of 1 December 2014.

Proposed changes shown in RED are being dealt with as part of AM2014/305—Penalty rates

AHA proposed amendment to clause 3—Definitions and interpretation:

3.1 In this award, unless the contrary intention appears:

additional holiday means for the purposes of entitlements or benefits arising under this award, any day or part day falling within the scope of s.115(b) of the Act.

holiday means any day or part day defined as an additional holiday or a public holiday under this award.

public holiday means, for the purposes of entitlements or benefits arising under this Award, each of these days:

(i) 1 January (New Year’s Day);
(ii) 26 January (Australia Day);
(iii) Good Friday;
(iv) Easter Monday;
(v) 25 April (Anzac Day);
(vi) The Queen’s birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
(vii) 25 December (Christmas Day);
(viii) 26 December (Boxing Day).

If, under (or in accordance with a procedure under) a law of a State or Territory, a day is substituted for a day that would otherwise be a public holiday because of the definition above, then the substitute day is the public holiday.
AHA proposed amendment to clause 32—Penalty rates:

32. **Penalty rates Additional remuneration**

32.1 An employee performing work on the following days will be paid the following percentage of the minimum hourly wage rate in clause 20—Minimum wages for the relevant classification:

<table>
<thead>
<tr>
<th></th>
<th>Monday to Friday</th>
<th>Saturday</th>
<th>Sunday</th>
<th>Public holiday</th>
<th>Additional holiday</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full-time and part-time</td>
<td>100 %</td>
<td>125 %</td>
<td>175 %</td>
<td>250 % 225 %</td>
<td>200 %</td>
</tr>
<tr>
<td>Casual (inclusive of the 25% casual loading)</td>
<td>125 %</td>
<td>150 %</td>
<td>175 %</td>
<td>225 % 175 %</td>
<td>125 %</td>
</tr>
</tbody>
</table>

32.2 **Public holidays Holidays**

(a) An employee other than a casual working on a public holiday will be paid for a minimum of four hours’ work. A casual employee working on a public holiday will be paid for a minimum of two hours’ work.

(b) Employees (other than casual employees) who work on a prescribed holiday may, by agreement, perform such work at their applicable ordinary hourly rate plus 50% 25% additional loading rather than the penalty rate additional remuneration prescribed in clause 32.1, 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 that such holiday may be allowed to the employee within 28 days of such holiday falling due.

(c) An employee other than a casual working on Christmas Day when it falls on a weekend, and is not prescribed as a public holiday under the NES as defined in this award will be paid an additional loading of 50% of their applicable ordinary hourly rate for the hours worked on that day and will also be entitled to the benefit of a substitute day.

32.3 **Other penalty-additional remuneration**

Employees will be entitled to the following additional penalty remuneration for work performed at the following times:

(a) Monday–Friday—7.00 pm to midnight: 10% of the standard hourly rate per hour or any part of an hour for such time worked within the said hours;

(b) Monday–Friday—midnight to 7.00 am: 15% of the standard hourly rate per hour or any part of an hour for such time worked within the said hours.

32.4 **Penalty rates Additional remuneration not cumulative**

Except as provided in clause 31—Breaks, where time worked is required to be paid for at more than the ordinary rate such time will not be subject to more than one penalty-additional remuneration rate, but will be subject to that penalty the rate which is to the employee’s greatest advantage.
AHA proposed amendment to clause 37—Public holidays:

37. **Public holidays**

37.1 National Employment Standards

(a) **Public holidays are provided for in the NES Substitution by Agreement**

By agreement between the employer and the majority of employees in the relevant enterprise or section of the enterprise, an alternative day may be taken as the public holiday instead of any of the days prescribed in s.115 of the Act holidays in this award.

(b) **Additional arrangements for full-time employees:**

(i) A full-time employee whose rostered day off falls on a public holiday must, subject to clause 32.2, either:

- be paid an extra day’s pay; or
- be provided with an alternative day off within 28 days; or
- receive an additional day’s annual leave.

For the purposes of this subclause a “day” is equal to the length of time of the rostered day off that falls on the holiday.

(ii) A full-time employee who works on a public holiday which is subject to substitution as provided for by the NES this award will be entitled to the benefit of the substitute day.

(c) **Arrangements for part-time employees**

Part-time employees are entitled to public holidays prescribed in s.115 of the Act holidays as defined in clause 3 without loss of pay if those public holidays fall on days agreed under clauses 12.3 and 12.4. Part-time employees who work on a public holiday must be paid in accordance with clause 32.

(d) **Part Day Additional Holidays**

(i) Where a full-time employee is usually rostered to work ordinary hours on a part day additional holiday, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on an additional holiday for such hours and paid their ordinary rate of pay for those hours.

(ii) A full-time employee not rostered to work on a part-day additional holiday, other than an employee who has exercised their right to refuse to work in accordance with the NES, will not be entitled to another day off, another day’s pay or another day of annual leave as a result of the part-day additional holiday.
AHA proposed amendment to Schedule H—Part day Public Holidays:

Schedule H—2015 Part-day Public Holidays

This schedule operates where this award otherwise contains provisions dealing with public holidays that supplement the NES.

H.1 Where a part-day public holiday is declared or prescribed between 7.00pm and midnight on Christmas Eve (24 December 2015) or New Year’s Eve (31 December 2015) the following will apply on Christmas Eve and New Year’s Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:

(a) All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.

(b) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.

(c) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.

(d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.

(e) Excluding annualised salaried employees to whom clause H.1(f) applies, where an employee works any hours between 7.00pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.

(f) Where an employee is paid an annualised salary under the provisions of this award and is entitled under this award to time off in lieu or additional annual leave for work on a public holiday, they will be entitled to time off in lieu or pro-rata annual leave equivalent to the time worked between 7.00pm and midnight.

(g) An employee not rostered to work between 7.00pm and midnight, other than an employee who has exercised their right in accordance with clause H.1(a), will not be entitled to another day off, another day’s pay or another day of annual leave as a result of the part-day public holiday.

This schedule is not intended to detract from or supplement the NES.

This schedule is an interim provision and subject to further review.