



# AUSTRALIAN HOTELS ASSOCIATION

24 Brisbane Avenue Barton ACT 2600 • PO Box 4286 Manuka ACT 2603 • Australia  
email: aha@aha.org.au • Facsimile: (02) 6273 4011 • Telephone: (02) 6273 4007  
Web: www.aha.org.au

## **Four Year review of Hospitality Industry (General) Award 2010 (“The HIGA”) AHA Position Statement Updated 16 February 2015**

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### **Background**

The hospitality industry is one of Australia’s largest employing industries, employing some 640,000 people across the sectors of hotels (170,000), accommodation (90,000), casinos (20,000), clubs (100,000) and restaurants & caterers (250,000). In contrast to other industries such as manufacturing or mining, the hospitality industry employs people in every Australian state, city, town and electorate.

The vast majority of hospitality businesses are small-to-medium-enterprises (SMEs) for whom it is impractical to engage in collective bargaining and rely on award conditions set by the Fair Work Commission. The highest demand for hospitality businesses is generally outside normal Monday to Friday business hours, with the community expecting hospitality venues to be open on evenings, weekends and public holidays.

The current Hospitality Industry (General) Award 2010 (“the Award”) is punitive on the 24/7 hospitality industry, creating additional labour costs on evenings, weekends and public holidays and leading to increased underemployment. As part of the Four Year Review of the Award, the AHA is seeking for the Award to be varied to better reflect modern Australian society and business environment.

### **Key issues**

The AHA will be seeking change in the following areas that diminish employment opportunities:

- Penalty rates – ensuring employee pay and conditions are fair, but also remove the current major disincentives to open the doors on weekends and public holidays
- Part-time flexibility - removing the current inflexibility to enable employers to employ people on a part-time basis rather than on a casual basis
- Public Holidays – to establish a different penalty rate for the eight (8) public holidays set out in the National Employment Standards, with a lower rate for all other public holidays set by the states.

### **The process**

In 2015, the Fair Work Commission (FWC) will be conducting a full review of the Award. This review is the first of the four-yearly reviews of modern awards provided for in the *Fair Work Act (2009)*. AHA will also be making submissions to the Productivity Commission Workplace Relations Framework Review.

As part of its processes, the FWC must consider the Modern Awards Objectives as set out in section 134 of the *Fair Work Act (2009)*. In regard to employees, these objectives state in part that modern awards must:

- provide a fair and relevant minimum safety net
- take into account matters such as relative living standards and the needs of the lower paid
- provide additional remuneration for employees working overtime, weekends and public holidays

In regard to societal and business needs, the FWC must also take into account:

- the need to promote social inclusion through increased workforce participation
- the need to promote flexible modern work practices and the efficient productive performance of work
- the impact of modern awards on business including productivity, sustainability, employment costs, regulatory burden, employment growth and competitiveness of the national economy

Whilst in principle the employee remuneration objectives might be being met under provisions of the Award, the societal, workforce and business related objectives in the Act are clearly not. Particularly on Sundays and public holidays, fewer opportunities for work are being created due to venues not being opened. This is due to high wage rates making it impossible for the venue to make a profit, resulting in underemployment. Workers are adversely affected as they are not able to earn income on these days.

#### **“One size fits all” structure**

The AHA understands the difficulty for the Fair Work Commission (FWC) having to adopt a “one size fits all” approach so as to devise award structures that are simple for employers and employees to manage and understand. For example, all public holidays are categorised at the same rate; but do we really think that the Queen’s Birthday has as much social, religious or cultural significance as Christmas Day?

A “one size fits all” approach does not cater for those workers currently missing out on work and income who would otherwise be prepared to work at rates less than the current prohibitive rates which cause businesses not to open. The AHA seeks a flexible system that minimises underemployment and maximises return on investment.

#### **Penalty rates history**

In 1950, the Industrial Relations Commission of New South Wales confirmed that “employers must compensate employees for the disturbance to family and social life and religious observance that weekend work brings”. A key intent of penalty rates was to discourage employers from working employees on weekends.

In 1947 the Commonwealth Conciliation and Arbitration Commission found Saturday work should be remunerated at 125% of the base rate, and the rate for Sunday work should be 200% of the base rate. Nearly 70 years later, and with an economy and society that is operating 24 hours per day 365 days per year, work conditions are still based on a model that was reflective of life in 1947.

Back then, penalty rates were designed to discourage employers from working employees on weekends. Today, a vast number of people want to work on weekends due to family reasons, study commitments or lifestyle choices. However, they are prohibited from working because venues are penalised for opening.

## **Replace the term “Penalty Rates” with “Additional Remuneration”**

AHA argues that the term penalty rates is a reflection of the puritan views prevailing in the early 1900’s where penalty rates were used as a tool to penalise businesses from opening. Such a term is inconsistent with the demand for services 24/7 in today’s society and the shift to a more flexible and non-traditional working and business environment. AHA is proposing that the words “Penalty Rates” are substituted with the words “Additional Remuneration”.

### **Three-way loss**

The AHA argues that the imposition of high penalty rates is discouraging employers from opening on weekends and public holidays, and as a consequence do not meet the Modern Objectives relating to social inclusion in the workplace, flexibility and productivity.

The majority of customer demand for hospitality falls outside the 9am to 5pm Monday to Friday period on which the current industrial system is based. Trading on evenings, Saturdays, Sundays and on public holidays is subject to a punitive penalty rate and overtime regime. Hospitality venues are often unable to trade profitably and therefore don’t open resulting in a three-way loss:

1. The community are deprived of being able to purchase or enjoy the products or services they wish
2. The workers are deprived the opportunity to earn income
3. The business owner is deprived of maximising the return from his or her investment

To reduce exposure to higher labour costs on public holidays, hotels reduce service offerings including for example:

- closing restaurants for lunch and/or dinner
- reducing access to room service
- closing or reducing bar trading hours
- limiting menu offerings
- minimising the servicing of rooms and amenities

Casual employees (who make up 80% of the industry workforce) are often not rostered to work on public holidays and therefore miss out on income they would otherwise have received. The reduction of services on offer impacts the ability of Australian hotels to compete against other international markets for tourist visitations. If penalty rates were lower on these days, normal operations and services would be provided, employment increased, and the negative impacts highlighted above would be removed.

### **Better balance required**

The current level of penalty rates causes many businesses to trade unprofitably on Sundays and public holidays in particular. Hospitality businesses are open and trading when others are closed. The AHA wants to ensure employee pay and conditions are fair but also remove the current disincentives to open the doors on weekends and public holidays.

AHA is not asking for the abolition of penalty rates. The AHA agrees that additional remuneration should be provided for employees working overtime, weekends and public holidays. However, a better balance is required to enable more businesses to open their doors. Workers end up suffering most of all by venues not opening despite workers being available and willing to work. The simple

fact is that while lifestyles have changed, workplace conditions haven't changed to reflect the new environment.

Many hotels operate on the "cost of wages" at about 25% of total sales. On a Monday to Friday, if a venue grosses \$1,000 in sales, it would expect to pay about \$250 in wages. The remainder would be allocated to paying all the other costs. On a public holiday with gross revenue of \$1,000, the cost of wages could climb as high as nearly \$700. That would leave only about \$300 left to pay for all the other costs e.g. GST, cost of goods, fixed costs, depreciation, electricity and profit. Even if a surcharge is able to be added, it is very difficult to open the business.

### **Summary of Proposed variations to penalty rates (see also Appendix A)**

AHA is submitting that Sunday and Public Holiday penalty rates should be varied so as to enable more businesses to open their doors thus creating more employment. A summary is set out below.

- Monday to Saturday unchanged
- Sundays Permanent, part time and casual to be reduced from 175% to 150%
- Public holiday (8 National holidays per National Employment Standards)
  - Permanent and part time to be reduced from 250% to 225%
  - Casuals to be reduced from 275% to 175%
- New category of "Additional Public Holiday" to apply to State Government declared public holidays
  - Permanent and part-time to be 200% (includes 100% in lieu)
  - Casuals to be 125% (includes 25% casual loading)

### **Part-time flexibility**

The current arrangements regarding part time employment discourage employers from hiring people on a part time basis. Whilst 80% of hotel employees are employed on a casual basis, only 2% are hired on a part time basis. This is a strong indicator that the current part time framework is not working for the hotel industry.

Part-time employment provides workers with a higher degree of certainty regarding the number of hours they will receive work. This job security helps them when applying for loans or renting a home. However the current arrangements are too restrictive and more flexibility is required.

The exact days and hours of work are fixed and any work performed outside these hours is considered overtime. For example, if a person is employed to work 20 hours per week being from 10am till 2pm Monday to Friday, if that person works 21 hours in a week, that extra hour is paid at overtime rates. Therefore, rather than having the potential impost of having to pay significantly higher overtime rates, businesses currently opt to hire staff on a casual basis.

### **Public holidays**

AHA supports the concept that a reasonable amount of public holidays is a valid reward for employees. AHA also generally agrees that increased rates of pay are warranted for those working public holidays. However, the AHA is concerned that there is no consistency of the number of public holidays, and that business bears the cost when excessive numbers of dates are sanctioned.

The National Employment Standards set out eight (8) days on which all Australians must have a public holiday. The States/Territories are then able to declare any number of additional public holidays to the eight (8) provided by the Commonwealth. Unfortunately, there is inconsistency

between the states and territories on the number of public holidays each year. Productivity and labour costs are highly impacted by the public holiday penalty rates (casuals 275% & permanents 250%).

The number of public holidays is the domain of the Federal and State/Territory governments. However, the rates of pay on public holidays are the domain of the FWC. The AHA is asking the Commission to establish a different penalty rate for the eight (8) public holidays set out in the National Employment Standards, with a lower rate for all other public holidays set by the states.

The number of public holidays varies from state to state and year to year. Good public policy provides certainty, but the current system does not achieve that. State governments often add public holidays, but never subtract one in return. The cost is borne by business, e.g.

- Queensland Government gazetted a public holiday in Brisbane on Friday 14 November 2014 for the G20 – then complaining when businesses failed to open their doors for the international visitors
- Victorian Labor Party offering AFL Grand Final Eve as a public holiday if elected.
- State/Territory governments declaring Monday 28<sup>th</sup> December 2015 as an additional public holiday despite the history of the Monday after Boxing Day being a substitute day in the past when Boxing Day has fallen on a weekend.
- South Australia gazetted half day holidays on Christmas Eve and New Years Eve.

The range of the number of the public holidays amongst the states varies significantly. Please see [Appendix B](#) for a list of public holidays.

## **Conclusion**

Prohibitive labour costs under the current penalty rate system make it very difficult for venues to open outside of 'standard' hours; thus denying many workers the opportunity to earn additional income when it most suits their lifestyle and family needs. The current cost structure also inhibits social inclusion by limiting workforce participation.

The AHA is not seeking to abolish penalty rates, part-time employment or public holidays. However, the rationale for such provisions was set midway through the last century. Last century's rationale is inconsistent with the modern award objectives of ensuring a fair, modern, flexible and productive environment so as to increase employment and business activity.

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**Appendix A**

**CURRENT HIGA PENALTY RATES**

	<b>Monday to Friday %</b>	<b>Saturday %</b>	<b>Sunday %</b>	<b>Public Holiday %</b>
<b>Full-time and part-time</b>	100	125	175	250
<b>Casual</b>	125	150	175	275

**PROPOSED HIGA ADDITIONAL REMNERATION**

	<b>Monday to Friday %</b>	<b>Saturday %</b>	<b>Sunday %</b>	<b>Public Holiday % (8 national public holidays per the NES)</b>	<b>Additional Public Holidays % (State Government declared public holidays)</b>
<b>Full-time and part-time</b>	100	125	150	225	200
<b>Casual</b>	125	150	150	175	125

## Appendix B

### List of Public Holidays 2016

No.	NSW	Victoria	Queensland	Tasmania	SA	WA	ACT	NT
National								
1.	New Year's Day	New Year's Day	New Year's Day	New Year's Day	New Year's Day	New Year's Day	New Year's Day	New Year's Day
2.	Australia Day	Australia Day	Australia Day	Australia Day	Australia Day	Australia Day	Australia Day	Australia Day
3.	Good Friday	Good Friday	Good Friday	Good Friday	Good Friday	Good Friday	Good Friday	Good Friday
4.	Easter Monday	Easter Monday	Easter Monday	Easter Monday	Easter Monday	Easter Monday	Easter Monday	Easter Monday
5.	Anzac Day	Anzac Day	Anzac Day	Anzac Day	Anzac Day	Anzac Day	Anzac Day	Anzac Day
6.	Queen's Birthday	Queen's Birthday	Queen's Birthday	Queen's Birthday	Queen's Birthday	Queen's Birthday	Queen's Birthday	Queen's Birthday
7.	Christmas Day	Christmas Day	Christmas Day	Christmas Day	Christmas Day	Christmas Day	Christmas Day	Christmas Day
8.	Boxing Day	Boxing Day	Boxing Day	Boxing Day	Proclamation Day	Boxing Day	Boxing Day	Boxing Day
State (Substitute, Additional, Other)								
9.	Easter Saturday	Labour day	Easter Saturday	Hob. Reg/Rec Day	March Public Holiday	Labour Day	Canberra Day	Easter Saturday
10.	Easter Sunday	Easter Saturday	Show Holiday	Eight Hours Day	Easter Saturday	WA Day	Easter Saturday	May Day
11.	Bank Holiday	Melb cup day	Labour day	Easter Tuesday	Labour day	Xmas Day (Add.)	Family&Community	Picnic Day
12.	Labour Day	Xmas Day (Sub.)	Xmas Day (Add.)	Xmas Day Sub)	Xmas Eve 7pm-12pm	Boxing Day (Add.)	Labour Day	Xmas Day (Sub.)
13.	Xmas Day (Add.)	AFL GF Eve		Local Cup/Shows	NYE 7pm-12pm	NJYD Sunday 1 January <b>2017</b> (add)	Xmas Day (Sub.)	Show Days (5 local)
14.	Cup Days ½ day	Easter Sunday			Xmas Day (add.)	Monday 2 January <b>2017</b>		
15.					Procl. Day (add.)			

ENDS

For further information [info@aha.org.au](mailto:info@aha.org.au)