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Fair Work Commission
Terrace Tower
80 William Street
EAST SYDNEY NSW 2000

Dear Registry

FWC Matter No. AM2014/305
4 YEARLY REVIEW OF MODERN AWARDS
PENALTY RATES ISSUES – FAST FOOD INDUSTRY AWARD 2010

Please find attached for filing in the above matter, a submission on behalf of the Australian Industry Group concerning penalty rates in the *Fast Food Industry Award 2010*.

Yours faithfully



Leanne Cruden
Senior Lawyer
Ai Group Legal

IN THE FAIR WORK COMMISSION

Matter No: AM2014/305
Re Application by: Australian Industry Group

1. Introduction

1. The Australian Industry Group (**Ai Group**) has prepared this submission pursuant to the Commission's Statement of 17 December 2014 ([2014] FWC 9175) (**Statement**).
2. As required by the directions contained in the Statement, this submission addresses:
 - (a) comments in relation to the draft timetable for the programming in matter AM2014/305, which appeared as Attachment A to the Statement;
 - (b) draft determinations sought to the *Fast Food Industry Award 2010* by Ai Group ; and
 - (c) common evidence.

2. Comments on draft timetable

3. Ai Group does not currently foresee any difficulties with respect to meeting the timeframes in the matter as established in the draft timetable.
4. However, it makes the following general comments:
 - 4.1 The draft timetable makes provision for hearing evidence in "Retail" awards during the period 27 September – 9 October 2015. It is noted that 27 September 2015 is a Sunday.
 - 4.2 We are concerned that 10 days may be insufficient to hear all evidence relating to penalty rates claims against awards in the "retail" category, however propose that this issue be further discussed at the conference on 20 February 2015 in light of any updated positions from other parties regarding estimates of the number of witnesses and time required to hear the evidence.
 - 4.3 In a submission filed on 4 December 2014 by Ai Group, it foreshadowed that up to 10 days' may be required to hear its matter, and that its case would include witness evidence from employers, survey evidence and expert evidence. At the time, Ai

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Group indicated that it would be in a position to refine this estimate at further conferences during early 2015. Ai Group anticipates being in a position to update its estimate of the number of witnesses and time required to hear the evidence which it intends to rely upon at the conference on 20 February 2015.

- 4.5 We expect that witness statements to be filed in the matter will include witnesses from (at least) New South Wales, Queensland, Victoria and South Australia. Given the difficulties likely to be faced by these witnesses in having to travel (including potentially, interstate) in order to give evidence, we request that hearing dates be listed in the capital city for each of these locations. Alternatively, we respectfully request that video-link facilities be made available at each of these locations.

3. Draft determinations sought to the *Fast Food Industry Award 2010* in relation to penalty rates

5. Ai Group seeks a determination varying the *Fast Food Industry Award 2010* in the terms reflected in **Attachment A** to this submission.

4. Common Evidence

6. Ai Group does not currently intend to call an expert to provide “common evidence” (as that term is defined in the Statement¹). It intends to file a tender bundle of documents, including but not limited to reports published by the Australian Bureau of Statistics. Ai Group also intends to call survey evidence, as part of the retail group stage of the proceedings.
7. If (contrary to the view taken by Ai Group) there is an issue as to whether the survey evidence is to be regarded as common evidence, Ai Group respectfully requests that this issue be dealt with at the conference on 20 February 2015.

¹ [2014] FWC 9275 at [9].

ATTACHMENT A

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

Part 2-3, Div 4 – 4 yearly review of modern awards

Fast Food Industry Award 2010

AM2014/305

PRESIDENT ROSS MELBOURNE, XX XX 2015

A. That clause 25.5 of the *Fast Food Industry Award 2010* be varied by deleting “9pm” in sub-clause 25.5(a)(i) and replacing it with “10pm”, as follows:

25.5 Penalty rates

(a) Evening work Monday to Friday

(i) A loading of 10% will apply for ordinary hours of work within the span of hours between ~~9.00 pm~~ 10pm and midnight, and for casual employees this loading will apply in addition to their 25% casual loading.

(ii) A loading of 15% will apply for ordinary hours of work after midnight, and for casual employees this loading will apply in addition to their 25% casual loading.

B. That sub-clause 25.5(c)(i) be amended by deleting the reference to “50%” and replacing it with “25%”, and sub-clause 25.5(c)(ii) be amended by deleting the reference to “75%” and replacing it with “50%” as follows:

25.5 Penalty rates

...

(c) Sunday work

(i) A ~~50%~~ 25% loading will apply for all hours of work on a Sunday for full-time and part-time employees.

(ii) A ~~75%~~ 50% loading will apply for all hours of work on a Sunday for casual employees, inclusive of the casual loading.