

Senate Education and Employment
References Committee
Inquiry into Penalty Rates

Submission of
the Department of Employment

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1. Introduction

The Department of Employment (the Department) welcomes the opportunity to make a written submission to the Senate Education and Employment References Committee Inquiry into Penalty Rates. The terms of reference for the inquiry focus on the negotiation of enterprise agreements (in the Accommodation and Food Services and Retail Trade industries) that trade off or provide for lower weekend and public holiday penalty rates than the relevant modern award and a range of related matters.

In providing a submission, the Department has responded to each of the individual terms of reference.

2. Responses to the terms of reference

a) Claims that many employees working for large employers receive lower penalty rates under their enterprise agreements on weekends and public holidays than those set by the relevant modern award, giving those employers a competitive advantage over smaller businesses that pay award rates

The enterprise bargaining framework in the *Fair Work Act 2009* (Fair Work Act) allows employers and employees to negotiate terms and conditions of employment that better suit their circumstances, subject to a Better Off Overall Test (BOOT). Employees and employers are able to trade off award conditions, such as weekend penalty rates, for other benefits, such as a higher base rate of pay, as long as the employees covered by the agreement are better off overall. **Attachment A** of this Submission provides an analysis of some agreements that have different Sunday penalty rates to the relevant award.

In 1993, the *Industrial Relations Reform Act 1993* introduced enterprise level bargaining as the centrepiece of Australia's workplace relations framework. Enterprise bargaining was introduced in part to drive productivity in the workplace by allowing employers to tailor the working conditions to their individual circumstances. One outcome of bargaining may be to allow an employer to allocate their wage bill more flexibly over the course of a week. This may include removing or reducing award penalty rates in the agreement in exchange for trade-offs. It can never include lowering the base hourly rate of pay below the relevant base rate of pay under a modern award or the national minimum wage order for award-free employees.

While enterprise bargaining is available to both large and small employers, bargaining is primarily utilised by larger businesses. As noted by the Productivity Commission:

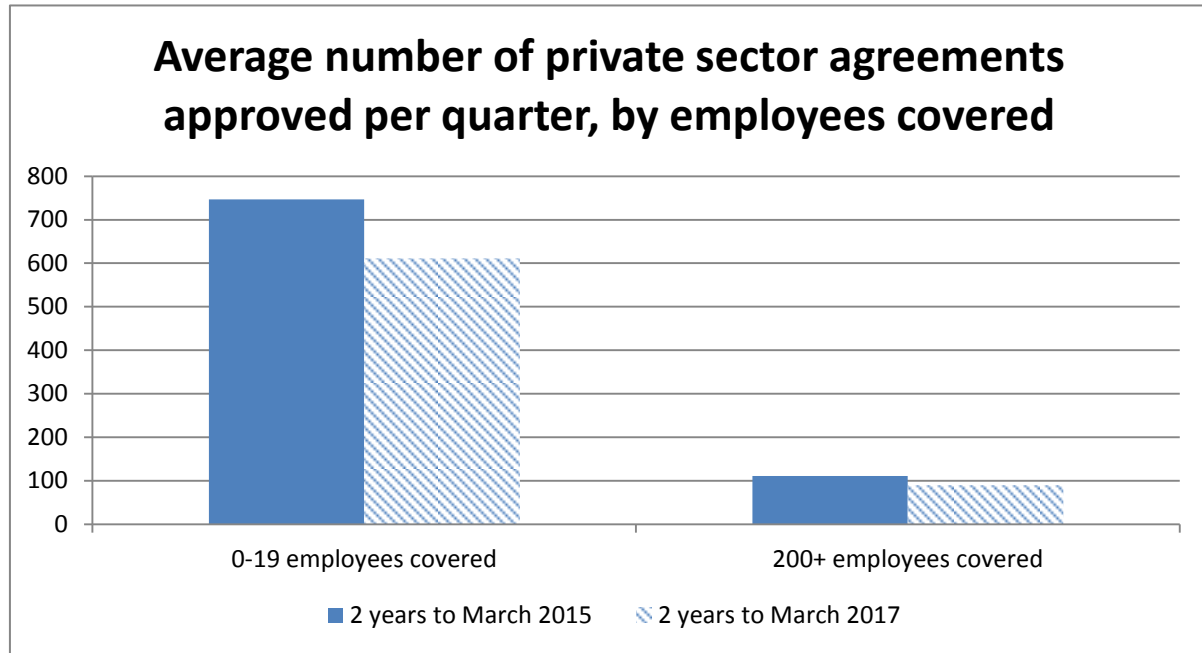
“The data certainly support the notion that enterprise bargaining is mainly the province of larger businesses rather than small businesses. However, this plain fact need not suggest that there is a problem. Enterprise bargaining comes with certain ‘economies of scale’. The time and costs associated with striking a bargain and complying with certain (hopefully reformed) procedural requirements may outweigh any efficiency gains from negotiating and using one EA rather than many individual agreements for businesses with a smaller number of employees.”¹

Consequently, it is mainly large businesses that negotiate enterprise agreements, whereas smaller businesses generally remain on the relevant award.

There has been a general decline in agreement making in the private sector. This decline is most notable in small private sector agreements (that is, those agreements with between 0 and 19 employees covered). In the two years to 31 March 2017, the average number of small agreements approved across the private sector was 611 per quarter (see Chart 1). In the two years prior to that, the average was 747 per quarter. For large agreements (i.e. those covering 200+ employees), the average number of agreements approved across the private sector in the two years to 31 March 2017 was 90 per quarter. In the two years prior to that, the average was 111 per quarter.

¹ Productivity Commission Report into the Workplace Relations Framework, December 2015, Vol 2, p709.

Chart 1: Number of private sector agreements approved, by employees covered



As part of the four yearly review of modern awards, the independent Fair Work Commission decided to reduce Sunday penalty rate provisions for some workers covered by the Hospitality, Retail, Pharmacy and Fast Food Awards.²

These awards generally fall within, but do not only encompass, the Accommodation and Food Services and Retail Trade industry divisions as classified by the Australian Bureau of Statistics. These industries cover a broad range of sub-industries such as supermarkets, hotel/motel businesses and café, restaurant and pub operations. Not all of the workers in these industries are necessarily covered by the Hospitality, Retail, Pharmacy and Fast Food Awards, and are therefore not affected by the Fair Work Commission’s decision to reduce Sunday and public holiday penalty rates. For example, these industries also cover sub-industries such as new and used car retailers and petrol stations which are covered by other awards.

Examining these industries, there has also been a decline in the number of small agreements approved. For the Accommodation and Food Services industry and the Retail Trade industry, the number of small agreements approved in the two years to 31 March 2017 was 89 and 48 respectively (see Chart 2). In the two years prior to that, the number of small agreements approved was 127 and 67 respectively. For large agreements (i.e. those covering 200+ employees) in these two industries the number of agreements approved in the two years to 31 March 2017 was 17 and 24 respectively. In the two years prior to that, the number of agreements approved was 32 and 46 respectively.

² The *Hospitality Industry (General Award) 2010* (MA000009), the *Retail Industry Award 2010* (000004), the *Pharmacy Industry Award 2010* (MA000012) and the *Fast Food Industry Award 2010* (MA000003). *4 yearly review of modern awards – penalty rates – hospitality and retail sectors* [2017] FWCFB 1001 [689], accessed at www.fwc.gov.au/awards-and-agreements/modern-award-reviews/am2014305-penalty-rates-case#field-content-2-heading. It also reduced public holiday rates in the Hospitality, Retail, Pharmacy, Restaurant and Fast Food Awards to all employees which those awards apply.

Chart 2: Number of private sector agreements approved in the Accommodation and Food Services industry and Retail Trade industry by employees covered



The Department estimates that the Fair Work Commission’s change to Sunday penalty rates will affect about three to four per cent of Australia’s workforce. That is, between 300,000 to 450,000 employees who at least sometimes work on a Sunday under the relevant award may be affected by the Fair Work Commission’s decision on Sunday penalty rates.

In relation to penalty rates contained in modern awards, the Productivity Commission noted:

“Penalty rates have a legitimate role in compensating employees for working long hours or at asocial times. However, Sunday penalty rates for hospitality, entertainment, retailing, restaurants and cafes are inconsistent across similar work, anachronistic in the context of changing consumer preferences, and frustrate the job aspirations of the unemployed and those who are only available for work on Sunday. Rates should be aligned with those on Saturday, creating a weekend rate for each of the relevant industries.”³

It should be noted that despite the recommendations of the Productivity Commission, the Fair Work Commission did not reduce Sunday penalty rates to align them with Saturday rates in all awards in these industries, and that Sunday rates remain higher in all but one of the affected awards than the equivalent Saturday rate.⁴

The Department manages the Workplace Agreement Database (WAD) which contains wages, conditions, and demographic information on about 140,000 enterprise agreements approved since 1991.

³ Productivity Commission Report into the Workplace Relations Framework, December 2015, Vol 1, p 3.

⁴ The Fast Food Industry Award 2010 has the same rates of pay for Saturday and Sunday following the Fair Work Commission’s penalty rate decision for Level 1 employees only (once transition is complete).

While approved enterprise agreements are publicly available on the Fair Work Commission website, they are often long documents and difficult to compare with other agreements. The WAD is unique in that it holds a range of extracted information about each agreement. Agreements are coded against some 200 variables. The WAD is used to produce the publicly released quarterly *Trends in enterprise agreement making report* and for other workplace relations policy development-related purposes. Further information on the WAD and how to access it is at www.employment.gov.au/workplace-agreements-database.

The Department has undertaken an analysis of agreements in the WAD to compare the hourly agreement rate for Sunday work. The analysis has been undertaken for agreements that:

- were approved under the Fair Work Act and have not expired or have expired but not been terminated or replaced;⁵
- identify the Fast Food, Retail, Hospitality or Pharmacy modern awards as their parent award; and
- covered 200 or more employees⁶ at the time of being approved by the Fair Work Commission.

Against these criteria, 108 large agreements were selected as being in scope. This comprises 14.5 per cent of all enterprise agreements that have these awards as their parent award (746 agreements in total⁷). However, these large agreements cover the majority of employees under agreements that have the Fast Food, Retail, Hospitality or Pharmacy modern awards as their parent award. The large agreements identified cover 455,116 employees from a total of 478,440 employees or 95.1 per cent of employees in the analysis.

The Department's analysis showed that of the 108 large agreements, 70 agreements (64.8 per cent) have a below-award hourly rate for hours worked on a Sunday. These 70 agreements cover 431,437 employees or 94.8 per cent of employees in the 108 large agreements.⁸

The analysis only considers Sunday work for a Level 1 permanent adult employee (who may or may not work on a Sunday). It does not constitute a full comparison of the agreement and relevant award and does not involve a comparison of hourly rates paid on any other days of the week. Nor does it replicate the BOOT undertaken by the Fair Work Commission during the agreement approval process. In particular, it does not compare other terms or conditions in the agreement against the relevant modern award. The Department has not verified its interpretation of the provisions of any agreement with employers. Further information on the analysis and methodology is at **Attachment A**.

Negotiating reduced Sunday penalty rates in enterprise agreements may afford some companies a competitive advantage by allowing the company to produce goods or services at a price point that is lower than that of its competitors on Sundays.

In its recent consideration of Sunday and public holiday penalty rates, the Fair Work Commission received submissions about the difficulties faced by small businesses owners in the retail and

⁵ It should be noted the WAD contains no information as to whether such expired agreements continue to operate.

⁶ The ABS generally defines large business as those with 200+ employees.

⁷ Of the remaining agreements, 173 agreements had 10 or less employees at the time they were approved by the Fair Work Commission and 465 had between 11 and 199 employees.

⁸ The Department does not have any information on how many of these employees actually work on a Sunday.

hospitality industries in operating and hiring staff on Sundays due to higher penalty rates. The Fair Work Commission concluded that modifying Sunday and public holiday penalty rates would be likely to lead to some positive employment effects⁹.

The extent to which this provides a competitive advantage can be complex as pay rates on any one particular day are only one factor that may give one business a competitive advantage over another business. Competitive advantage may allow a company to produce goods or services at a price point that is lower than that of its competitors. Competitive advantage can involve a number of factors including cost structure, brand power and loyalty, quality of product or services, geographic location, access to new technology, faster and more reliable distribution networks, intellectual property, ability to innovate and superior customer support.

⁹ *4 yearly review of modern awards – penalty rates – hospitality and retail sectors* [2017] FWCFB 1001 [689], accessed at www.fwc.gov.au/awards-and-agreements/modern-award-reviews/am2014305-penalty-rates-case#field-content-2-heading.

b) The operation, application and effectiveness of the Better Off Overall Test (BOOT) for enterprise agreements made under the Fair Work Act 2009

An enterprise agreement passes the BOOT if the Fair Work Commission is satisfied that, at the ‘test time’ (i.e. the time the application to approve the agreement was made), each award covered employee and each prospective award covered employee would be better off overall if they were employed under the agreement than under the relevant modern award.¹⁰

If a class of employees would be ‘better off’, the Fair Work Commission is entitled to assume that an individual from within that class would be better off overall, in the absence of evidence to the contrary.¹¹

The Productivity Commission inquiry into the workplace relations framework recommended replacing the BOOT with a new no-disadvantage test (NDT) that would apply to classes of employees, rather than each individual employee. The Productivity Commission noted:

“In principle, the BOOT discourages employers whose current employment arrangements are at, or close to, the award level from willingly engaging in enterprise bargaining. The requirement to make employees better off than the award means that an employer that currently uses an award-based arrangement may see limited upside for their business, due to a test that appears skewed towards employees. Innovation may be discouraged and inefficiency retained for fear of failing an unclear test.”¹²

However, the Productivity Commission specifically recommended a form of the test which did not narrowly define class, citing work patterns on weekdays or weekends as one example of a class of employees the Fair Work Commission may wish to assess. The Productivity Commission considered the NDT should be applied against classes of employees.

Fair Work Commission approval processes

The consideration and assessment of whether a proposed agreement passes the BOOT is a matter for the Fair Work Commission. Commission Members make the decision as to whether or not an agreement should be approved in accordance with the Fair Work Act.

Following an initial pilot, the Fair Work Commission now assesses most applications for approval of an enterprise agreement using a triage process. By the end of 2015-16, 90 per cent of applications were assessed under the process.

Under the triage process, a team of administrative staff (that is, non-Commission Members) analyses agreements against the statutory requirements of the Fair Work Act, including the BOOT. The analysis includes completing a checklist that was developed by Commission Members. Agreements that have been submitted to the Fair Work Commission for approval but not yet determined are made public on the Fair Work Commission’s website, allowing access not only to the employer, employees, and bargaining representatives but also interested parties, who may then make submissions to the Commission about whether the agreement should be approved. Commission Members then make the final decisions on whether or not to approve agreements.

¹⁰ Section 193(1) of the Fair Work Act

¹¹ Section 193(7) of the Fair Work Act

¹² Productivity Commission Report into the Workplace Relations Framework, December 2015, Vol 1, p 695

The Fair Work Commission's 2015-16 Annual Report (the Fair Work Commission Annual Report) notes that the process has reduced the time taken for agreement approval decisions by the Fair Work Commission. For further detail on the triage process is available in the Fair Work Commission Annual Report.

When issues that may lead to an agreement not being approved are drawn to the parties' attention, such as issues identified by bargaining representatives or the Fair Work Commission, the application may be withdrawn. In 2015–16, 595 applications were withdrawn, compared to 407 in 2014–15 and 294 in 2013–14, despite similar numbers of applications for approval being made.

Relevant data

In 2014-15, the Fair Work Commission reported the following in regard to applications to approve an enterprise agreement:

- 5,922 applications lodged
- 5,481 approved
- 407 withdrawn
- 117 not approved
- 6,005 total finalised.

In 2015-16, the Fair Work Commission reported the following in regard to applications to approve an enterprise agreement:

- 5,529 applications lodged
- 4,801 approved
- 595 withdrawn
- 53 not approved
- 5,449 total finalised.

The Fair Work Commission has not yet published data in regard to applications to approve an enterprise agreement for the 2016-17 financial year.

The Department estimates that in relation to applications lodged within the 2014-15 financial year, approximately 15 were refused for reasons including a failure to pass the BOOT. In relation to applications lodged within the 2015-16 financial year, approximately 22 were refused for reasons including a failure to pass the BOOT. For applications lodged within the 2016-17 financial year, approximately 13 have been refused for reasons including a failure to pass the BOOT.¹³

¹³ Note that if an application for approval of an agreement is refused on one basis, another ground (which might have included the application of the BOOT) may not have been explored in the decision. Where the Department was not able to discern the application date from a decision or data provided by the Fair Work Commission, the time of application was approximated (based on the relevant matter number) for the purpose of including the decision in the relevant financial year. Note also that these figures are current as at 17 July 2017 (i.e., there are likely to be further decisions of the Fair Work Commission still pending, particularly in relation to applications lodged in the 2016-17 financial year).

The table below shows the percentage of applications which were 'not approved' over the 2014-15 and 2015-16 financial years as a proportion of the total enterprise agreement applications by year made to the Fair Work Commission. The Department has also analysed the decision records of the applications which were 'not approved', and has estimated the percentage where failure to approve the application was at least partly attributable to the BOOT. Finally, as the Fair Work Commission advises that it may counsel employers to withdraw enterprise agreement approval applications where they are unlikely to be approved, the table also shows the percentage of withdrawals as a percentage of the total application caseload.

Percentage of 'not approved' and withdrawn enterprise agreement applications, of total applications by financial year		
	2014-15	2015-16
Applications not approved	1.98%	0.96%
Of applications not approved - those at least in part related to a failure to meet the BOOT	12.80%	41.5%
Applications withdrawn	6.87%	10.76%

c) The desirability of amending the Fair Work Act 2009 to ensure that enterprise agreements do not contain terms that specify penalty rates which are lower than the respective modern award

This is a matter for Government.

d) The provisions of the Fair Work (Pay Protection) Bill 2017

On 29 March 2017, the Australian Greens introduced the Fair Work Amendment (Pay Protection) Bill 2017 (the Bill) into the Senate as a Private Member's Bill. The Bill would amend the Fair Work Act so that employees cannot be paid less under an enterprise agreement than the 'full rate of pay' in the relevant modern award. The 'full rate of pay' is defined in section 18 of the Fair Work Act for national system employees as the rate of pay payable to the employee including incentive-based payments and bonuses, loadings, monetary allowances, overtime, penalty rates and any other separately identifiable amounts. Under the Fair Work Act, these matters are able to be bargained on subject to the agreement passing the BOOT.

The Committee is also holding a separate inquiry into the provisions of this Bill.

Scope available for bargaining

The Bill would significantly reduce the scope that employees and employers can bargain for in an enterprise agreement. In its current form, enterprise bargaining allows individual firms to propose and negotiate enterprise-specific improvements to conditions or pay which can be exchanged or traded-off by agreement with employees.

Under the Bill, the 'full rate of pay' of each employee cannot be less in an agreement than in the relevant modern award, effectively meaning that any monetary condition in the relevant modern award cannot be traded-off in an enterprise agreement for improved conditions.

Operation and application of the Bill

The Bill specifies that the amendments would apply to enterprise agreements made before, on or after the day on which the legislation receives royal assent. This means that the amendments would apply to existing agreements. Parties who have negotiated agreements lawfully under the framework that existed at the time would potentially lose the conditions negotiated in their agreements.

Regulatory burden and compliance costs

The Bill would increase the regulatory burden and compliance costs for employers with enterprise agreements by requiring them to reconcile total payments under an agreement with what each employee would have received under the relevant modern award.

Existing enterprise agreements that have already traded off monetary conditions, such as penalty rates, would require wage payments to be reconciled on an ongoing basis to ensure that the 'full rate of pay' for employees is not below that of the relevant modern award.

e) Any other matters

The Department does not wish to raise any additional matters.

Attachment A – Departmental analysis of Sunday rates in some large Enterprise Agreements

As outlined in the Submission, this Attachment represents the Department of Employment’s interpretation of the provisions of a selection of enterprise agreements and applicable awards to compare the hourly agreement rate for Sunday work.

The analysis has been undertaken for agreements that:

- were approved under the Fair Work Act and have not expired or have expired but not been terminated or replaced;
- identify the Fast Food, Retail, Hospitality or Pharmacy modern awards as their parent award; and
- covered 200 or more employees¹⁴ at the time of being approved by the Fair Work Commission.

It does not constitute a full comparison of the agreement and relevant award and does not involve a comparison of hourly rates paid on any other day of the week. Nor does it replicate the BOOT undertaken by the Fair Work Commission during the agreement approval process. It does not compare other terms or conditions in the agreement against the relevant modern award. Each agreement listed that negotiated a lower Sunday penalty rate than the relevant award pays a higher hourly rate for ordinary time (base rate of pay) than the award rate.

The Department has not verified its interpretation of the provisions of any agreement with employers. No assumptions have been made about rosters worked, that is, the Department has no information about the indicative or actual rosters worked by employees under the agreement and so the comparison is a simple comparison of what is paid for one hour of ordinary time worked on a Sunday under the agreement and under the award. The comparison undertaken does not take into account any restrictions in the agreement on how many hours or days in a roster cycle or year an individual employee can work, for instance, on Sundays, penalty shifts or public holidays. Similarly, any separate arrangements that may exist between an employer and employees are not included.

Enterprise agreements have a nominal expiry date. The agreement remains legally operational after its nominal expiry date until it is either terminated or replaced by a new agreement. However, agreements can also cease to have any practical application in circumstances where the enterprise has undergone changes such that no employees are covered by the agreement (e.g. the enterprise has ceased to trade, with no transfer of business). The Department has no information as to whether such expired agreements continue to have any practical application.

¹⁴ The ABS generally defines large business as those with 200+ employees.

The date of the calculation is the expiry date of the agreement where it has expired. Where the agreement has not expired then 30 June 2017 has been used as the common date for the comparison. The date of calculation is compared to the equivalent wage rate in the modern award that applied at this time unless identified differently in the table. The date of commencement was not chosen as the default date of comparison because this would generally involve using older wage rates. It is however recognised that on some occasions the wage rates are front loaded and this may produce a different result. Where an agreement only provides wage rates at the start of the agreement and does not quantify future wage increases, the date of commencement has been used as the date of comparison.

The Sunday rate for each agreement is calculated based on a selected Level 1 (or equivalent) permanent employee. Other employees will be paid at different rates that may be higher or lower than the relevant award on a Sunday. As some agreements use different employee classification structures, the Department chose the classification it considered was as close as possible to the level 1 classification in the relevant award. These employees may or may not work on a Sunday. In a small number of instances the comparable award classification was above the base level. This was only used if there was a statement in the agreement identifying the comparable award classification or the agreement base classification description better aligned to a higher award classification description.

Where the agreement indicates there is more than one penalty rate on Sundays, the penalty used has been the one for “core business hours”.

Where various occupational groups are covered by the agreement, the group relevant to the Retail, Fast Food, Pharmacy or Hospitality modern awards was used for the analysis and the other groups were not considered. Grandfathering provisions that retained higher entitlements for existing employees were also not taken into account when undertaking the wage comparison.

The employee number column is the number of employees who were nominated by the employer as being initially covered by the agreement. It may have changed and does not mean the employees are all covered by the comparator award, work on a Sunday or are subject to the Sunday rate included in the table.

Unions listed are all those unions covered by the agreement. It does not mean their members are all in the relevant industries or paid the Sunday rate included in the table.

How to read:

At the first row of the table is the McDonald's Australia Enterprise Agreement 2013 which covered 99,706 employees at the time the agreement was approved. The reference instrument nominated by the employer as the relevant award for the BOOT is the Fast Food Industry Award 2010. The union

noted in the Fair Work Commission approval decision for the agreement as having sought under section 183 of the Fair Work Act to be covered by the agreement is the SDAEA. The date for the wage comparison undertaken in the table for the McDonald's agreement is the date of the expiry of the agreement which is 24 June 2017. The table indicates that the McDonald's agreement pays a 0% loading for ordinary hours on Sundays compared to a 50% loading in the Fast Food Industry Award 2010. The table then shows that the McDonald's agreement as at 24 June 2017 pays the base classification \$21.08 for each ordinary hour worked on a Sunday. The comparable Fast Food Industry Award 2010 hourly rate for each ordinary hour worked on a Sunday is \$29.16 and thus the agreement pays \$8.08 per ordinary hour on Sunday less than the relevant award.

Acronyms of unions used in the table are as follows:

AWU	The Australian Workers' Union
LHMU	Liquor Hospitality and Miscellaneous Workers Union (now known as United Voice)
SDAEA	Shop, Distributive and Allied Employees Association
NUW	National Union of Workers
TWU	Transport Workers' Union of Australia
APESMA	Association of Professional Engineers, Scientists and Managers, Australia
AMIEU	Australasian Meat Industry Employees Union

AGREEMENTS THAT INCLUDE SUNDAY RATES BELOW THE AWARD

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
McDonald's Australia Enterprise Agreement 2013	99706	Fast Food Industry Award 2010	SDAEA	24/06/2017	2017	0%	50%	\$21.08	\$29.16	-\$8.08
Woolworths National Supermarket Agreement 2012	95571	General Retail Industry Award 2010	AWU, SDAEA, AMIEU	30/06/2015	2015	50%	100%	\$31.79	\$37.05	-\$5.26
Coles Supermarkets Australia Pty Ltd and Bi-Lo Pty Limited Retail Agreement 2011	79754	General Retail Industry Award 2011	AWU, SDAEA, AMIEU	31/05/2014	2014	50%	100%	\$30.54	\$35.97	-\$5.42
Bunnings Warehouse/Small Format Stores Agreement 2013	26226	General Retail Industry Award 2010	AWU, SDAEA	30/06/2016	2016	50%	100%	\$32.59	\$37.97	-\$5.38
BIG W Stores Certified Agreement 2012	19703	General Retail Industry Award 2010	AWU, SDAEA	1/08/2015	2015	50%	100%	\$30.23	\$37.97	-\$7.74
Pizza Hut Queensland - SDA Employee Relations Agreement 2014	14790	Fast Food Industry Award 2010	SDAEA	14/01/2016	2016	0%	50%	\$20.35	\$28.48	-\$8.13
Super Retail Group Enterprise Agreement 2015	8991	General Retail Industry Award 2010	-	15/07/2018	2017	55%	100%	\$32.48	\$38.88	-\$6.40
David Jones Enterprise Agreement 2012	7042	General Retail Industry Award 2010	SDAEA	3/06/2015	2015	50%	100%	\$29.53	\$37.05	-\$7.52

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
The Reject Shop Agreement 2014.	5906	General Retail Industry Award 2010	SDAEA	1/03/2018	2017	50%	100%	\$32.82	\$38.88	-\$6.06
Masters Agreement 2014	5029	General Retail Industry Award 2010	AWU, SDAEA	1/02/2017	2017	50%	100%	\$33.27	\$38.88	-\$5.61
Drakes Supermarkets Retail Agreement 2012	4777	General Retail Industry Award 2010	SDAEA, AMIEU	1/09/2016	2016	50%	100%	\$31.69	\$38.88	-\$7.20
Coles Liquor Group Retail Agreement 2014	4750	General Retail Industry Award 2010	AWU, SDAEA	31/12/2017	2017	50%	100%	\$31.79	\$38.88	-\$7.09
SFG National Retail Enterprise Agreement 2011	4450	General Retail Industry Award 2010	SDAEA	30/06/2014	2014	50%	100%	\$28.38	\$35.97	-\$7.59
KFC Team Members' Enterprise Agreement - Queensland and Tweed Heads (NSW) 2014 - 2017	4229	Fast Food Industry Award 2010	AWU, SDAEA	30/06/2017	2017	0%	50%	\$21.19	\$29.16	-\$7.97
BWS Enterprise Agreement 2013	3964	General Retail Industry Award 2010	SDAEA	30/06/2016	2016	50%	100%	\$32.65	\$37.97	-\$5.32
Prouds Retail Employees Enterprise Agreement 2011	3674	General Retail Industry Award 2010	SDAEA	28/07/2015	2015	50%	100%	\$29.63	\$37.97	-\$8.35

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Best & Less Enterprise Agreement 2013	3499	General Retail Industry Award 2010	SDAEA	30/06/2016	2016	50%	100%	\$29.94	\$37.97	-\$8.03
Master Grocers Australia Limited and Shop, Distributive and Allied Employees' Association Enterprise Agreement 2014	2530	General Retail Industry Award 2010	SDAEA	30/07/2017	2017	70%	100%	\$34.65	\$38.88	-\$4.23
Sodexo Remote Sites Onshore Enterprise Agreement 2013	2212	Hospitality Industry (General) Award 2010	LHMU, AWU	3/11/2017	2017	0%	75%	\$23.76	\$31.87	-\$8.11
Dan Murphy's Agreement 2012	2049	General Retail Industry Award 2010	SDAEA	1/07/2015	2015	50%	100%	\$30.59	\$37.97	-\$7.38
Grill'd Enterprise Agreement 2015	2014	Fast Food Industry Award 2010	-	22/12/2019	2015	0%	50%	\$21.75	\$28.48	-\$6.73
Hotels Agreement 2014	1888	Hospitality Industry (General) Award 2010	LHMU	30/06/2017	2017	50%	75%	\$30.19	\$31.87	-\$1.67
PRICELINE RETAIL EMPLOYEES ENTERPRISE AGREEMENT 2013	1496	General Retail Industry Award 2010	SDAEA	1/12/2016	2016	88%	100%	\$38.26	\$38.88	-\$0.62

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Vodafone Powered	1476	General Retail Industry Award 2010	-	1/10/2016	2013	0%	100%	\$21.28	\$35.97	-\$14.69
Harris Scarfe Agreement 2011	1470	General Retail Industry Award 2010	SDAEA	12/09/2014	2014	50%	100%	\$28.49	\$37.05	-\$8.56
Billabong Group Enterprise Agreement	1386	General Retail Industry Award 2010	-	30/06/2015	2015	50%	100%	\$28.59	\$37.05	-\$8.46
Betts Group Agreement-2013	1298	General Retail Industry Award 2010	SDAEA	30/06/2015	2015	50%	100%	\$29.94	\$37.05	-\$7.11
IKEA Enterprise Agreement 2013	1298	General Retail Industry Award 2010	SDAEA	31/08/2017	2017	50%	100%	\$35.14	\$38.88	-\$3.73
Sanity Entertainment Enterprise Agreement 2010	1266	General Retail Industry Award 2010	SDAEA	30/06/2013	2013	50%	100%	\$27.30	\$35.06	-\$7.76
BWS Agreement 2010	1115	General Retail Industry Award 2010	SDAEA	20/06/2013	2013	50%	100%	\$29.65	\$35.06	-\$5.41
Lovisa Enterprise Agreement 2014	1050	General Retail Industry Award 2010	SDAEA	31/03/2018	2017	50%	100%	\$31.44	\$38.88	-\$7.44

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Suzanne Grae Enterprise Agreement 2012	1003	General Retail Industry Award 2010	SDAEA	30/09/2014	2014	50%	100%	\$30.42	\$37.05	-\$6.63
Romeo's Retail Group Enterprise Agreement 2012	1000	General Retail Industry Award 2010	SDAEA	1/06/2016	2016	50%	100%	\$30.45	\$37.97	-\$7.52
Noni B Enterprise Agreement 2014	991	General Retail Industry Award 2010	SDAEA	31/03/2018	2017	50%	100%	\$32.30	\$38.88	-\$6.58
Bras N Things Enterprise Agreement 2014	969	General Retail Industry Award 2010	SDAEA	31/03/2018	2017	50%	100%	\$30.53	\$38.88	-\$8.36
RACV Club and Resorts Collective Agreement 2015	826	Hospitality Industry (General) Award 2010	-	23/07/2016	2016	50%	75%	\$32.23	\$33.09	-\$0.86
Freedom Retail Enterprise Agreement 2013 - 2016	818	General Retail Industry Award 2010	SDAEA	1/07/2016	2016	60%	100%	\$33.30	\$38.88	-\$5.58
ALDI Brendale Agreement 2015	627	General Retail Industry Award 2010	SDAEA	29/06/2019	2015	\$12 per hour loading	100%	\$35.40	\$37.97	-\$2.57
Supabarn Supermarkets (NSW & ACT) Collective Agreement 2011	533	General Retail Industry Award 2010	SDAEA	30/06/2014	2014	50%	100%	\$29.84	\$35.97	-\$6.13

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Cheap as Chips (Retail SA / Broken Hill Staff) Enterprise Agreement 2013	503	General Retail Industry Award 2010	SDAEA	30/09/2017	2017	80%	100%	\$37.46	\$38.88	-\$1.43
Estee Lauder National Retail Services Enterprise Agreement 2012	468	General Retail Industry Award 2010	-	19/09/2016	2016	\$80 loading per shift of 5+ hours	100%	\$31.63	\$40.43	-\$8.80
Wittner Enterprise Agreement 2013	443	General Retail Industry Award 2010	-	30/08/2017	2017	50%	100%	\$30.97	\$38.88	-\$7.92
Langham Hotel Melbourne - United Voice Agreement 2015	431	Hospitality Industry (General) Award 2010	LHMU	1/10/2018	2017	0%	75%	\$21.63	\$31.87	-\$10.24
Spotlight Pty Ltd Store Leadership Enterprise Agreement 2010	428	General Retail Industry Award 2010	SDAEA	30/06/2014	2010	0%	100%	\$23.53	\$32.95	-\$9.41
InterContinental Sydney Enterprise Agreement 2011-2012	421	Hospitality Industry (General) Award 2010	LHMU	31/12/2012	2012	0%	75%	\$21.22	\$28.74	-\$7.51
Bunnings SDA Retail Trade Agreement 2013	420	General Retail Industry Award 2010	AWU, SDAEA	30/06/2016	2016	50%	100%	\$36.42	\$37.97	-\$1.55

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Australian Geographic Retail Enterprise Agreement 2014-2017	408	General Retail Industry Award 2010	SDAEA	30/06/2017	2017	50%	100%	\$30.95	\$38.88	-\$7.94
Henley Square Foodland Enterprise Agreement 2011	399	General Retail Industry Award 2010	SDAEA	25/07/2012	2012	50%	100%	\$27.83	\$35.06	-\$7.23
AMT Group Retail Agreement 2013	370	General Retail Industry Award 2010	-	10/12/2016	2016	50%	100%	\$29.89	\$38.88	-\$8.99
VICTORIA STATION CORPORATION PTY LTD ENTERPRISEAGREEMENT 2015	349	General Retail Industry Award 2010	-	7/09/2019	2017	50%	100%	\$30.71	\$38.88	-\$8.17
Master Grocers Australia Limited (Michael's IGA Supermarkets) and Shop, Distributive and Allied Employees' Association Enterprise Agreement 2014	347	General Retail Industry Award 2010	SDAEA	30/07/2017	2017	70%	100%	\$34.65	\$38.88	-\$4.23
Ed Harry Enterprise Agreement 2011	338	General Retail Industry Award 2010	-	5/10/2015	2015	50%	100%	\$30.26	\$37.97	-\$7.71
Intercontinental Adelaide Enterprise Agreement 2011-2012	329	Hospitality Industry (General) Award 2010	LHMU	31/12/2012	2012	0%	75%	\$20.55	\$28.74	-\$8.18

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Emirates Leisure Retail (Australia) Pty Ltd Enterprise Agreement 2010	328	Hospitality Industry (General) Award 2010	-	17/12/2013	2010	0%	75%	\$18.36	\$29.49	-\$11.13
Master Grocers Australia Limited (Ryan's IGA) and Shop, Distributive and Allied Employees' Association Enterprise Agreement 2014	318	General Retail Industry Award 2010	SDAEA	30/07/2017	2017	70%	100%	\$34.65	\$38.88	-\$4.23
IHG Canberra Enterprise Agreement 2011-2012	305	Hospitality Industry (General) Award 2010	LHMU	31/12/2012	2012	0%	75%	\$21.22	\$28.74	-\$7.52
Sheraton Perth & LHMU Collective Agreement 2010	297	Hospitality Industry (General) Award 2010	LHMU	31/12/2012	2012	65%	75%	\$27.64	\$28.74	-\$1.10
Parkroyal Hotels' Agreement 2012	280	Hospitality Industry (General) Award 2010	LHMU	1/05/2014	2014	0%	75%	\$21.48	\$29.49	-\$8.00
YHA Ltd Enterprise Agreement 2015	273	Hospitality Industry (General) Award 2010	-	8/03/2019	2017	0%	75%	\$21.90	\$31.87	-\$9.97

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Sheraton Mirage Resort & Spa Gold Coast Enterprise Agreement 2010	259	Hospitality Industry (General) Award 2010	LHMU	30/06/2013	2013	0%	75%	\$18.76	\$28.74	-\$9.98
Barbeques Galore Enterprise Agreement 2010	251	General Retail Industry Award 2010	SDAEA	31/07/2013	2013	50%	100%	\$28.21	\$35.97	-\$7.76
Haigh's Retail Enterprise Agreement 2014	250	General Retail Industry Award 2010	SDAEA	30/11/2017	2017	70%	100%	\$35.12	\$38.88	-\$3.76
Independent Supermarkets ACT Certified Agreement 2010	241	General Retail Industry Award 2010	SDAEA	28/02/2013	2013	50%	100%	\$27.27	\$35.06	-\$7.79
Rolld Enterprise Agreement 2014	240	Fast Food Industry Award 2010	-	1/10/2018	2017	0%	50%	\$21.19	\$29.16	-\$7.97
Queens Supermarket (WA) and SDA Agreement 2013	233	General Retail Industry Award 2010	SDAEA	15/04/2017	2017	50%	100%	\$31.11	\$38.88	-\$7.78
Crowne Plaza Terrigal Enterprise Agreement 2011-2012	232	Hospitality Industry (General) Award 2010	LHMU	31/12/2012	2012	0%	75%	\$21.22	\$28.74	-\$7.52

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Hilton Brisbane Enterprise Agreement 2010	231	Hospitality Industry (General) Award 2010	LHMU	1/07/2013	2013	75%	75%	\$29.13	\$29.49	-\$0.36
Piccones Supa IGA Enterprise Agreement 2015	225	General Retail Industry Award 2010	-	1/12/2017	2017	50%	100%	\$31.83	\$38.88	-\$7.05
Master Grocers Australia Limited (Reddrop's FoodWorks) and Shop, Distributive and Allied Employees' Association Enterprise Agreement 2014	224	General Retail Industry Award 2010	SDAEA	30/07/2017	2017	70%	100%	\$34.65	\$38.88	-\$4.23
Palazzo Versace Enterprise Agreement 2012	220	Hospitality Industry (General) Award 2010	-	19/08/2016	2016	0%	75%	\$21.85	\$31.87	-\$10.02

AGREEMENTS THAT INCLUDE SUNDAY RATES EQUIVALENT TO THE AWARD OR GREATER

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Compass Group (ESS Remote - Western Australia) Enterprise Agreement 2012	3690	Hospitality Industry (General) Award 2010	AWU	5/03/2017	2017	75%	75%	\$34.32	\$31.87	\$ 2.45
Hyatt Enterprise Agreement 2011	1493	Hospitality Industry (General) Award 2010	-	30/06/2013	2013	75%	75%	\$29.31	\$28.74	\$ 0.57
Compass Group (ESS Remote - Queensland) Enterprise Agreement 2013	1455	Hospitality Industry (General) Award 2010	LHMU	17/05/2017	2017	75%	75%	\$33.58	\$31.87	\$ 1.71
Toys "R" Us Store Employment Agreement 2014	1431	General Retail Industry Award 2010	-	31/05/2017	2017	100%	100%	\$41.67	\$38.88	\$ 2.78
Stamford Hotels and Resorts Enterprise Agreement 2010	1163	Hospitality Industry (General) Award 2010	LHMU	30/06/2013	2013	75%	75%	\$29.31	\$28.74	\$ 0.57
Forever New Clothing Pty Ltd Enterprise Agreement 2016	818	General Retail Industry Award 2010	SDAEA	10/05/2020	2017	100%	100%	\$38.98	\$38.88	\$ 0.10

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Serco Sodexo Defence Services Pty Ltd New South Wales Services Agreement 2012 (excluding Shoalhaven)	643	Hospitality Industry (General) Award 2010	NUW, LHMU, TWU	30/11/2015	2015	100%	75%	\$37.48	\$31.13	\$ 6.35
Morris Corporation (WA) Pty Ltd Site Specific Agreement 2014	559	Hospitality Industry (General) Award 2010	AWU	15/10/2018	2017	100%	75%	\$37.97	\$31.87	\$ 6.10
TS14+ Enterprise Agreement 2012	434	General Retail Industry Award 2010	-	30/06/2016	2016	100%	100%	\$38.69	\$37.97	\$ 0.72
Nuance Group (Australia) Pty Ltd - NUW - Sydney Airport Agreement 2013	413	General Retail Industry Award 2010	NUW	30/09/2016	2016	77%	100%	\$40.59	\$38.88	\$ 1.71
Morris Corporation (Aust) Pty Ltd Enterprise Agreement 2014	350	Hospitality Industry (General) Award 2010	LHMU	7/07/2018	2017	100%	75%	\$37.98	\$31.87	\$ 6.11
Jupiters Townsville Enterprise Agreement 2013	346	Hospitality Industry (General) Award 2010	AWU	30/06/2016	2016	75%	75%	\$31.68	\$31.13	\$ 0.54
Serco Sodexo Defence Services Pty Ltd Queensland Services Agreement 2012	337	Hospitality Industry (General) Award 2010	LHMU, TWU	30/06/2015	2015	50%-100%	75%	\$35.25	\$30.36	\$ 4.88

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Country Club Resort and Villas Enterprise Agreement 2014	329	Hospitality Industry (General) Award 2010	LHMU	30/06/2017	2017	75%	75%	\$34.40	\$31.87	\$ 2.53
Surfers Paradise Marriott Resort and Spa Enterprise Agreement 2012	310	Hospitality Industry (General) Award 2010	LHMU	30/06/2015	2015	75%	75%	\$31.12	\$30.36	\$ 0.76
Moonee Valley Racing Club Agreement 2015-2018	300	Hospitality Industry (General) Award 2010	-	1/08/2018	2017	75%	75%	\$33.77	\$33.09	\$ 0.68
Glassons Enterprise Agreement 2016	286	General Retail Industry Award 2010	SDAEA	13/10/2020	2017	100%	100%	\$39.42	\$38.88	\$ 0.54
Morris Corporation (WA) Pty Ltd Enterprise Agreement 2014	273	Hospitality Industry (General) Award 2010	-	7/07/2018	2017	100%	75%	\$37.97	\$31.87	\$ 6.11
Sofitel Sydney Wentworth Enterprise Agreement 2011	272	Hospitality Industry (General) Award 2010	LHMU	6/07/2014	2014	75%	75%	\$30.97	\$30.36	\$ 0.61

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Cater Care Services Agreement 2014 - 2017 Western Region	266	Hospitality Industry (General) Award 2010	-	3/10/2017	2017	100%	75%	\$37.83	\$31.87	\$ 5.96
Tiffany & Co. (Australia) Pty Ltd National Retail Enterprise Agreement 2014	262	General Retail Industry Award 2010	-	22/05/2018	2017	100%	100%	\$44.80	\$38.88	\$ 5.92
Compass Group (ESS Larrakia) Enterprise Agreement 2016	257	Hospitality Industry (General) Award 2010	LHMU	21/10/2020	2017	100%	75%	\$39.78	\$31.87	\$ 7.91
National Pharmacies and Professionals Australia Pharmacists Agreement 2016	252	Pharmacy Industry Award 2010	APESMA	13/05/2019	2017	100%	100%	\$67.35	\$50.87	\$16.48
Cater Care Services Agreement 2014 - 2017 Eastern Australia	246	Hospitality Industry (General) Award 2010	-	3/10/2017	2017	100%	75%	\$37.83	\$31.87	\$ 5.96
CollectiV	241	General Retail Industry Award 2010	-	19/08/2013	2010	100%	100%	\$32.95	\$32.95	\$0.00
HPS (Pharmacy Managers, Pharmacists in Charge and Pharmacists) Enterprise Agreement 2015-2018	236	Pharmacy Industry Award 2010	APESMA	30/06/2018	2015	100%	100%	\$66.96	\$49.68	\$17.28

Agreement Title	Employees	Relevant modern award	Union	Expiry date	Year of comparison	Agreement Sunday penalty rate	Award Sunday penalty rate	Agreement Sunday hourly rate	Award Sunday hourly rate	Hourly \$ difference between Award and Agreement Sunday rate
Salsa's Pty Ltd Enterprise Agreement 2010-2014	229	Fast Food Industry Award 2010	-	31/03/2014	2013	75%	50%	\$30.30	\$26.98	\$ 3.33
Sydney Harbour Marriott Enterprise Agreement 2015	228	Hospitality Industry (General) Award 2010	-	17/02/2020	2017	75%	75%	\$32.66	\$31.87	\$ 0.80
HUGO BOSS Enterprise Agreement	224	General Retail Industry Award 2010	SDAEA	31/12/2017	2017	100%	100%	\$41.62	\$38.88	\$ 2.73

The following agreements have in place a range of Sunday wage structures, some of which fall above and some of which fall below the award in terms of Sunday rates of pay. As such they are not included in the previous tables.

Title	Employees	Relevant Modern Award	Expiry date
IPCA Enterprise Agreement 2014	1172	Fast Food Industry Award 2010	16/05/2019
IPCA (QLD) Enterprise Agreement 2011	845	Fast Food Industry Award 2010	21/07/2015
IPCA (VIC) Enterprise Agreement 2012	825	Fast Food Industry Award 2010	23/04/2016
IPCA (VIC, ACT & NT) Enterprise Agreement 2011	763	Fast Food Industry Award 2010	31/07/2015
IPCA Enterprise Agreement 2013	717	Fast Food Industry Award 2010	21/11/2017
ARL (WA) Enterprise Agreement 2012	376	General Retail Industry Award 2010	13/06/2013
IPCA (NSW) Enterprise Agreement 2012	354	Fast Food Industry Award 2010	23/04/2016
IPCA (SA) Enterprise Agreement 2011	278	Fast Food Industry Award 2010	31/07/2015
Trojan Workforce Labour Solutions Agreement 2014	1006	Pharmacy Industry Award 2010	17/08/2018