



# Australian Hotels Association (WA) e-Newsletter



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## LEAD STORIES

### Penalty Rates and Small Business: Why it's time for change

By Bradley Woods – CEO of the Australian Hotels Association (AHA)WA



Whether politicians like it or not, laws cannot be legislated free of future obsolescence, because change is inevitable.

Australian penalty rate laws are obsolete because the social and cultural landscape of Australian society has changed dramatically over the last 40-plus years. No longer do shops close early on a Saturday, no longer is there a typical Monday to Friday working week and no longer is Saturday a day for sport and Sunday an exclusive day of rest.

In 1919, the then Commonwealth Conciliation and Arbitration Commission said penalty rates on Sundays were compensation for working "unsociable hours". This is clearly no longer the case. People now work from home and around the clock, there are no longer defined boundaries in a 24/7 world.

Read the full article here: <http://pubtic.com.au/penalty-rates-small-business-why-its-time-for-change/>

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### Important Reminder: Appointing Temporary Managers



Recently the WA Police Liquor Enforcement Unit has been targeting the appointment of Temporary Approved Managers. **PLEASE REMEMBER** that if you as an approved manager need to step out to run an errand, go to the bank, have lunch etc. that you appoint a temporary approved manager.

Under section 100(3) of the Liquor Control Act 1988 (LCA), it states that a licensee may appoint a person to act as a temporary manager. However, section 101 stipulates that a manager is also responsible as though that person were the licensee. The definition of "licensee" links s101.

Therefore, it is not a breach for an approved manager to appoint a person as a temporary manager, particular for instances where the licensee may not be available.

You are also reminded that s170(db) of the LCA states; where the offence alleged is a contravention of section 100(2)(c), the licensee shall be deemed not to have appointed a person in accordance with section 100(3), in the absence of proof to the contrary.

Section 100(2)(c) confers that the licensee shall ensure that the conduct of the business is personally supervised and managed by a person appointed by the licensee, including a person appointed in accordance with section 100(3) to act as a temporary manager of the premises. There is currently a penalty of \$10 000 if this is not complied with.

Essentially, any person who is appointed as an approved manager must be aware that they are acting in the capacity as an "Approved Temporary Manager" and should be able to identify themselves as the temporary manager; if asked by Police.

Licensees and approved managers are reminded that a **Compliance Checklist** is also available through the AHA website for all members to utilise.

- Go to the [AHA website www.ahawa.asn.au](http://www.ahawa.asn.au)
- Enter your member login details
- Select the Licensed Premises Self Audit Report orange button (use your member login details again to login)

This checklist covers the various requirements in relation to the Liquor Control Act, the Tobacco Products Control Act and their associated Regulations. Members are encouraged to use this checklist to ensure compliance.

## Australia Day Trading Hours and Police Operations

A reminder to all members on the trading hours for Australia Day.

The current permitted trading hours are as per below and if you want your venue to operate until midnight or later on the Sunday preceding Australia Day, then an application must be made and approved by the Department of Racing, Gaming and Liquor.

	 <b>Australia Day Eve</b> (Sunday 25-1-2015)	 <b>Australia Day</b> (Monday 26-1-2015)
<b>Hotel, Tavern &amp; Small Bar</b>  Please check the conditions on <b>your Liquor Licence and any Extended Trading Permit.</b>	<ul style="list-style-type: none"> <li>10am – 10pm NB: Check trading conditions on ETP</li> <li>At any time to a lodger (Hotel &amp; Hotel At any time to a lodger (Hotel &amp; Hotel Restricted) – and only an amount which would be reasonably consumed on that day.</li> </ul>	<ul style="list-style-type: none"> <li>6am – midnight NB: Check trading conditions on ETP</li> <li>At any time to a lodger (Hotel &amp; Hotel At any time to a lodger (Hotel &amp; Hotel Restricted) – and only an amount which would be reasonably consumed on that day.</li> </ul>
<b>Restaurant</b>	Trading at any time, ancillary to a meal provided by the licensee. ETP (Liquor Without A Meal): Check the trading hours & conditions on the permit.	
<b>Special Facility Licence</b>	Check the conditions as specified on your licence.	

For further information regarding trading on Australia Day, please contact Wanda Daniels, Regulatory and Policy Adviser on 9321 7701 or email [rpa@ahawa.asn.au](mailto:rpa@ahawa.asn.au)

## City of Perth Australia Day Skyworks 2015

The City of Perth Australia Day Skyworks is the biggest Australia Day celebration in the Country - 300,000 people are expected to gather around the Swan River to celebrate Australia Day.

Find out what free entertainment and activities are on during the day at [www.visitperthcity.com/skyworks](http://www.visitperthcity.com/skyworks) or download the Skyworks smart phone app by searching 'Skyworks' on iTunes.

[Click here to view](#) a brief outline of this year's major highlights.

### **Public Transport**

For more information on Australia Day services, visit the Transperth website at [www.transperth.wa.gov.au](http://www.transperth.wa.gov.au), call the Transperth Info Line on 13 62 13 or download the Transperth App for iOS and Android [here](#).

### **Road Closures**

Kings Park roads are the first to close at 6am, followed by roads in South Perth at 8am. City of Perth closures begin at 12 noon for roads closest to the foreshore and at 7pm CBD streets including St Georges Terrace/Adelaide Terrace close.

Following the event, traffic will be directed by WA Police to ensure minimum delays and safe exit from the city and South Perth. Please expect delays. Roads will re-open when it is safe to do so and possible as late as 10.30pm.



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## HOSPITALITY AND LIQUOR LICENSING NEWS

### NEW ongoing Extended Trading Permit (ETP) Guide

Further to the AHA(WA) online Licensed Premises Checklist, the HIGA and RIA Checklist available to member, the AHA has also created and released a new tool for members to assist licensees and approved managers in successfully submitting an application for Ongoing Extended Trading Permit (ETP) .

This guide can be accessed by [clicking here to login to the members section of the AHA\(WA\) website](#). A link to download the guide can be found on the welcome page under latest news or within the Liquor Licensing section.

Login to view this guide and many more useful Liquor Licensing documents, links and information.

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### Public Holiday Surcharge

In relation to the signage and indication of a surcharge; restaurants, cafes and bistros that charge a surcharge on certain days do not need to provide a separate menu or price list or have a separate price column with the surcharge factored in.

However, the menu must include the words “**a surcharge of [percentage %] applies on [the specified day or days]**” and these words **must be displayed at least as prominently as the most prominent price on the menu.**

If the menu does not have prices listed, these words must be displayed in a way that is conspicuous and visible to a reader.

These measures apply to pricing for both food and beverages.

restaurant:

(a) means a business, service or arrangement:

(i) in which food or beverage is sold to customers; and

(ii) of a kind commonly known as a restaurant, cafe, bistro or any similar term; and

(b) does not include a business, service or arrangement by which food or beverage is provided or delivered to customers in the expectation of consumption at a later time; and

(c) does not include a business, service or arrangement for the delivery of groceries.

Example 1: Other examples for paragraph (a) are:

(a) a shop selling takeaway food; and

(b) a business that supplies food, ordered for immediate consumption, by home delivery only.

Example 2: An example for paragraph (b) is a business that delivers prepared meals as part of a diet or health program.

Example 3: An example for paragraph (c) is the home delivery service of a supermarket.

#### WA Public Holiday Calendar

2015	
Australia Day	Monday 26 January
Labour Day	Monday 2 March
Good Friday	Friday 3 April
Easter Monday	Monday 6 April
ANZAC Day	Monday 27 April
WA Day	Monday 1 June
Queen's Birthday #	Monday 28 September
Christmas day	Friday 25 December
Boxing Day	Monday 28 December

#Some regional areas in WA hold the Queen's Birthday public holiday on a different date.

For further information regarding public holiday surcharges, please contact Wanda Daniels, Regulatory and Policy Adviser on 9321 7701 or email [rpa@ahawa.asn.au](mailto:rpa@ahawa.asn.au)

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## GENERAL NEWS

### The Giants are Coming

The 2015 Perth International Arts Festival (13 February to 7 March) will open with a spectacular free event to commemorate the Anzac centenary entitled *The Incredible and Phenomenal Journey of The Giants to the Streets of Perth*.

*The Giants* is a three-day event taking place from 13-15 February on the streets and in the parks of Perth that will be talked about for years to come.

Delivered by the world's leading large-scale storytellers, *The Giants* will be the largest event in Australia to commemorate the centenary of Anzac and the biggest free public arts event Western Australia has ever seen.

*The Giants* involves a moving parade on the streets of Perth's CBD and is expected to attract one million attendances over the three days. As a result, there will be significant traffic delays over this period and road closures will be in place.

Road closures will be 'rolling', moving with the parade to minimise the impact on traffic. The Perth International Arts Festival is committed to opening the roads once they are clear and safe. Closures will last for periods of 30 minutes to two hours over the course of Friday 13 and Saturday 14 February 2015.

A dedicated Communications Coordinator has been working with businesses in and around the CBD to minimise the impact and maximise the benefit of *The Giants*.

If you are a business in the city and have not already received information from Perth Festival regarding road closures or would like to discuss how to leverage this once-in-a-lifetime event, please contact:

Lucy Gibson

Communications Coordinator – *The Giants*

E: [lgibson@perthfestival.com.au](mailto:lgibson@perthfestival.com.au)

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## WORKPLACE RELATIONS

### AHA Fighting Penalty Rates - you MUST complete the PwC Survey if you want penalty rates reduced

On 4 December 2014 AHA(WA) sent out the Penalty Rates Survey to all members as part of our campaign to amend the penalty rate regime under the Hospitality Industry General Award.

To date, there has been a **disappointing number of responses** to the national survey seeking your support.

We thank those that have taken their time to complete the survey but a much stronger response is needed if we are to gain any respect in terms of persuading the Fair Work Commission of the need for any change to the current penalty rates that applies within the hospitality sector.

The high penalty rates on weekends and public holidays is an issue the AHA has been fighting since the inception of the Award. The 4 yearly Modern Award Review is the **prime opportunity** for changes to occur in the Award system. As such we require members to assist in providing evidence from your business to represent all hotels, small bars, taverns and accommodation properties to collectively present a strong argument of the need to change the current restrictive penalty rates regime. Your voice **NEEDS** to be heard and this is the vehicle in which to do so!

Follow this link to complete the survey- [http://pwc.qualtrics.com/SE/?SID=SV\\_00go0sNuBqHdvPD](http://pwc.qualtrics.com/SE/?SID=SV_00go0sNuBqHdvPD)

In addition to the above, we are seeking employees who would be willing to provide evidence to the Fair Work Commission in the form of an affidavit/witness statement who would support working on weekends and public holidays for lower rates of pay.

If you have any queries please contact Workplace Relations on 9321 7701 or email [iradmin@ahawa.asn.au](mailto:iradmin@ahawa.asn.au)

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### \$100,000 fine for 457 Visa Holder underpayment

The operators of a **Tasmanian** take-away restaurant have been fined a total of **\$100,000** after engaging in 'particularly disturbing behaviour' in relation to a vulnerable foreign chef.

Launceston husband and wife Priscilla Li Peng Lam and David Wing Leong Lam - who own and manage Dave's Noodles in the **Launceston CBD** – have each been fined \$15,000 after admitting a Chinese chef at their restaurant was **underpaid \$86,118**.

The couple's company, ECFF Pty Ltd, has been penalised a further \$70,000 and ordered to fully rectify the underpayment of the chef, who has so far been back paid only \$50,000.

The fines and back-payment order imposed by the Federal Circuit Court, are the result of legal action by the Fair Work Ombudsman.

The Ombudsman investigated after the chef, who the Lams sponsored to come to Australia on a 457 work visa, lodged a complaint with the assistance of an interpreter.

Fair Work inspectors found the chef, aged in his 40s, had been paid flat weekly wages ranging from **\$804 to \$913** between 2008 and 2011 based on a 38-hour week, despite being **required to work 60 hours a week**.

The situation resulted in underpayment of the chef's **minimum hourly rate and penalty rates** for overtime, night, weekend and public holiday work.

Judge Norah Hartnett described the contraventions as "a very substantial underpayment of basic entitlements over an extended period of time".

Judge Hartnett also found that the underpayments were "significantly aggravated" by the Lams creating **false time and wages records** showing that the chef had worked 38 hours a week and **providing the false records** to Fair Work inspectors.

"The **creation of false time and wages records** by the respondents was particularly disturbing behaviour, worthy of significant reprimand," Judge Hartnett said.

Judge Hartnett said the conduct occurred in circumstances where the chef, who is now an Australian citizen, was a "vulnerable person" who was "highly reliant on the respondents to remain in Australia".

"The employee was directed by (Mr and Mrs Lam) to sign those time and wages books at intervals of around three to four months on the basis that they were needed for immigration purposes," Judge Hartnett said.

*Source: Fair Work Ombudsman Website\_*

**Tip for Members: With any sponsored workers you must ensure that you are paying them in line with the terms and conditions of their contract and in compliance with Industrial Relations and Immigration legislation.**

The Workplace Relations Team is running the following seminars on HIGA Award knowledge and Performance & Termination;

#### **Know Your Award HIGA**

4 February 2015- Perth

18 February 2015- Mandurah

11 March 2015- Geraldton

24 March 2015- Broome

#### **Performance & Termination**

18 February 2015- Mandurah

25 February 2015- Perth

11 March 2015- Geraldton

24 March 2015- Broome

### **Effective Recruitment Practices**

19 March 2015- Perth

To book contact the Training Department on 9321 7701 or [follow this link](#).

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### **Employers cautioned over backpacker, seasonal worker entitlements**

The Fair Work Ombudsman has issued a warning to growers, hostel owners and labour hire contractors that it will not tolerate the deliberate exploitation of backpackers and seasonal workers this summer.

The Agency has received fresh complaints about backpackers being lured to regional centres by dodgy labour-hire operators allegedly treating them poorly, bullying and sexually harassing them and ripping them off to the tune of hundreds of dollars.

The Fair Work Ombudsman revealed it is reviewing fresh reports against one operator who allegedly charges backpackers \$450 to find them jobs, and then pays them as little as 60c an hour to work on local farms.

The operator reportedly charges up to \$150 a week for backpackers to stay in substandard houses and caravans, with allegations of up to 32 people being accommodated in one home and 12 more sleeping in the garage.

The Fair Work Ombudsman is currently running a review of the wages and conditions of overseas workers in Australia on the **417 Working Holiday Visa** following a spike in complaints from backpackers over the past 3 years.

*Source: FWO Website*

**AHA(WA) reminds all members the employees should be paid in line with their classification under the relevant Award. If you have any concerns on what you pay your workers, contact the Workplace Relations Department on 9321 7701.**

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### **New additional apprentice conditions**

These new conditions for Apprentices will apply to **both** the *Hospitality Industry General Award 2010* (HIGA) and the *Restaurant Industry Award 2010* (RIA);

- Unless in the case of an emergency, apprentices will not work or be required to work **overtime or shift work** at times which would prevent their attendance at training;
- Employers are liable to pay apprentices' excess travel costs for attendance at block release training at a distant location requiring an overnight stay, except where the apprentice could attend a closer Registered Training Organisation;

- Reimbursement by Employers to Apprentices for the cost of all **training fees** and **prescribed textbooks** unless there is unsatisfactory progress;
- Apprentices are to be released from work without loss of wages to attend any training and assessment required as part of their training contract;
- Time spent by Apprentices in 'off the job' training and assessment is to be regarded **as time worked** for the purposes of wages, working conditions and leave entitlements and all other conditions of employment specified in the Award;

### **Updated Awards**

A copy of the current *Hospitality Industry (General) Award 2010* (HIGA) and the *Restaurant Industry Award 2010* (RIA), is available on the Members section of the AHA(WA) website. These Awards include the new variations for Apprentices.

### **Further Information**

For further information please contact the Workplace Relations Department on **9321 7701** or email [iradmin@ahawa.asn.au](mailto:iradmin@ahawa.asn.au)

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