



Northern Territory Branch AUSTRALIAN HOTELS ASSOCIATION



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NIGHT PENALITES Transitional Arrangements 1 July 2012 - 30 June 2013

Effective: 1 July 2012

This document provides guidance on night penalty payments payable under the *Hospitality Industry (General) Award 2010* ("HIGA"), as well as payments that existed under the pre-1 January 2010 award of the *Hotels, Motels, Wine Saloons, Catering, Accommodation, Clubs and Casino Employees (NT) Award 2002* ("Hotels Award").

With regard to transitional payments for night penalties, AHA has identified:

1. Night penalty payments are subject to transition from 1 July 2010 in accordance with HIGA Schedule A;
2. That when comparing the night penalty payments in the Hotels Award to clause 32.3 in the HIGA, the penalties are not 'equivalent', therefore the penalty payments in the Hotels Award are to be PHASED OUT as per A.6 in Schedule A;
3. The HIGA night penalty clause 32.3 will be PHASED IN as per A.7 in Schedule A.

PHASING OUT

The phasing out of a penalty is addressed at A.6 of Schedule A in the HIGA. This section of the Schedule provides guidance on phasing out a penalty where the penalty in the pre-1 January 2010 instrument is higher than an equivalent penalty in the corresponding modern award, **or** where there is no equivalent penalty in the modern award.

To phase out a penalty, the penalty will be reduced by a certain percentage over the transition period, meaning that on 1 July 2014 the penalty is totally phased out and not payable at all. The transition commenced on 1 July 2010 and provides that the following percentages of the amount in 15.2.2(a) be paid:

- From 1 July 2010 – 80%
- From 1 July 2011 – 60%
- From 1 July 2012 – 40%
- From 1 July 2013 – 20%
- From 1 July 2014 – the penalty no longer exists

PHASING IN

Clause A.7 in Schedule A of the HIGA is the reference for phasing in arrangements. To phase in a penalty, the penalty will be increased over the transition period, meaning that on 1 July 2014 the penalty is paid in



full (ie in accordance with Clause 32.3 of the HIGA). The transition commenced 1 July 2010 and provides that the following percentages of the amount be paid:

- From 1 July 2010 – 20%
- From 1 July 2011 – 40%
- From 1 July 2012 – 60%
- From 1 July 2013 – 80%
- From 1 July 2014 – the penalty applies in full

The 'phasing out' payment for the relevant late work penalty is stated below, together with the HIGA 'phasing in' payment. These payments are payable between 1/7/12 and 30/6/13.

CASUAL EMPLOYEES WORKING MONDAY THROUGH TO FRIDAY

1. Hours: 7pm and midnight as stated in both the Hotels Award and HIGA

A casual employee who works Monday to Friday between the hours of 7pm and midnight shall receive the following payments:

	Hotels Award (phasing out rates)	HIGA (phasing in rates)	TOTAL OF NIGHT PENALTY PAYMENT
Hour 1	\$0.71 (=40% of \$1.77)	\$1.12	\$1.83
Hour 2	\$0.71	\$1.12	\$1.83
Hour 3	\$0.71	\$1.12	\$1.83
Hour 4	\$0.71	\$1.12	\$1.83
Hour 5	\$0.71	\$1.12	\$1.83
Maximum Payment Due	\$2.12 (=40% of \$5.31)	No Maximum Payment is Specified	\$2.12*

* This maximum payment is provided in addition to the HIGA phasing in amount.

EXAMPLE 1

John is a casual bar attendant and he is required to work on Monday night from 7:00pm to 11:00pm. In addition to receiving payment for the hours worked, John would be entitled to receive night penalties. He would be entitled to receive the maximum payment of \$2.12 for the Hotels Award phasing out rate and \$4.48 (\$1.12 x 4 hours) for the HIGA phasing in rate. The total of the night penalty would be \$6.60. NOTE: in this example John would, at a minimum, only be entitled to the maximum payment of \$2.12 for the Hotels Award phasing out rate because \$2.84 (\$0.71 x 4 hours) would be more than the maximum payment of \$2.12.

EXAMPLE 2

Sarah is a casual bar attendant and she is required to work on Thursday from 3:00pm to 9:00pm. In addition to receiving payment for the hours worked, Sarah would be entitled to receive night penalties. She would be entitled to receive \$1.42 (\$0.71 x 2) for the Hotels Award phasing out rate and \$2.24 (\$1.12 x 2) for the HIGA phasing in rate. The total of the night penalty would be \$3.66.

2. Hours: Midnight and 7am as stated in both the Hotels Award and HIGA

A casual employee who works Monday to Friday between the hours of midnight and 7am shall receive the following payments:

	Hotels Award (phasing out rates)	HIGA (phasing in rates)	TOTAL NIGHT PENALTY PAYMENT
Hour 1	\$0.71 (=40% of \$1.77)	\$1.67	\$2.38
Hour 2	\$0.71	\$1.67	\$2.38
Hour 3	\$0.71	\$1.67	\$2.38
Hour 4	\$0.71	\$1.67	\$2.38
Hour 5	\$0.71	\$1.67	\$2.38
Hour 6	\$0.71	\$1.67	\$2.38
Hour 7	\$0.71	\$1.67	\$2.38
Maximum Payment Due	\$2.12 (=40% of \$5.31)	No Maximum Payment is Specified	\$2.12*

* The maximum payment is provided in addition to the HIGA phasing in amount.

NOTE: The maximum payment provided for in the Hotels Award is applied as an additional payment **for work outside of the hours of 7:00am to 7:00pm**. This maximum payment is to be considered on a per shift basis, regardless of whether the shift extends past midnight (ie into a new day). Therefore, where a roster provides for a shift from 6pm to 1am, for example, only one maximum payment (of \$2.12) is paid. Due to the HIGA having a pre midnight penalty and after midnight penalty, the payments have been depicted to show this. The maximum payment under the Hotels Award applies per shift only.

EXAMPLE 3

Sally is a night auditor and she is required to work on Thursday night from 7:00pm to 3:00am. In addition to receiving payment for the hours worked, Sally would be entitled to receive night penalties. She would be entitled to receive the maximum payment of \$2.12 for the Hotels Award phasing out rate and \$10.61 (\$1.12 x 5 hours + \$1.67 x 3 hours) for the HIGA phasing in rate. The total of the night penalty would be \$12.73. NOTE: in this example Sally would, at a minimum, only be entitled to the maximum payment of \$2.12 for the Hotel Award phasing out rate because \$5.68 (\$0.71 x 8 hours) would be more than the maximum payment of \$2.12.

EXAMPLE 4

Di is a casual bar attendant and she is required to work on Thursday morning from 12:00am to 2:00am. In addition to receiving payment for the hours worked, Di would be entitled to receive night penalties. She would be entitled to receive \$1.42 for the Hotels Award phasing out rate and \$3.34 (\$1.67 x 2) for the HIGA phasing in rate. The total of the night penalty would be \$4.76.

PENALTY RATES FOR EMPLOYEES OTHER THAN CASUALS

1. Hours: 7pm and midnight as stated in both the Hotels Award and HIGA

(a) Where the employee works ANY of their ordinary hours between Monday to Friday between 7pm and midnight

An employee, other than a casual, who works ANY of their ordinary hours Monday to Friday between the hours of 7pm and midnight shall receive the following payments:

	Hotels Award (phasing out rates)	HIGA (phasing in rates)	TOTAL LATE WORK PENALTY PAYMENT
Hour 1	\$0.71 (=40% of \$1.77)	\$1.12	\$1.83
Hour 2	\$0.71	\$1.12	\$1.83
Hour 3	\$0.71	\$1.12	\$1.83
Hour 4	\$0.71	\$1.12	\$1.83
Hour 5	\$0.71	\$1.12	\$1.83
Minimum Payment Due	\$1.05 (=40% of \$2.62)	No Minimum Payment is Specified	\$1.05*

* This minimum payment is provided in addition to the HIGA phasing in amount.

EXAMPLE 5

Peter is a full-time housekeeper and he is required to do some of his ordinary hours of work on Thursday from 5:00pm to 11:00pm. In addition to receiving payment for the hours worked, Peter would be entitled to receive night penalties. He would be entitled to receive \$2.84 (\$0.71 x 4 hours) for the Hotels Award phasing out rate and \$7.32 (\$1.12 x 4 hours) for the HIGA phasing in rate. The total of the night penalty would be \$10.16.

EXAMPLE 6

Stacy is a part-time bar attendant and she is required to do some of her ordinary hours of work on Monday from 3:00pm to 8:00pm. In addition to receiving payment for the hours worked, Stacy would be entitled to receive night penalties. She would be entitled to receive the minimum payment of \$1.05 for the Hotels Award phasing out rate and \$1.12 for the HIGA phasing in rate. The total of the night penalty would be \$2.17. NOTE: in this example Stacy would, at a minimum, be entitled to the minimum payment for the Hotels Award phasing out rate because the minimum payment of \$1.05 is more than \$0.71 (ie for one hour into late work).

(b) Where the employee works ALL of their ordinary hours between Monday to Friday between 7pm and midnight

An employee, other than a casual, who works ALL of their ordinary hours Monday to Friday between the hours of 7pm and midnight shall receive the following payments:

	Hotels Award (phasing out rates)	HIGA (phasing in rates)	TOTAL LATE WORK PENALTY PAYMENT
Hour 1	\$0.80 (=40% of \$2.00)	\$1.12	\$1.92
Hour 2	\$0.80	\$1.12	\$1.92
Hour 3	\$0.80	\$1.12	\$1.92
Hour 4	\$0.80	\$1.12	\$1.92
Hour 5	\$0.80	\$1.12	\$1.92

2. Hours: Midnight and 7am as stated in both the Hotels Award and HIGA

(a) Where the employee works ANY of their ordinary hours between Monday to Friday between midnight and 7am

An employee, other than a casual, who works ANY ordinary hours Monday to Friday between the hours of midnight and 7am shall receive the following payments:

	Hotels Award (phasing out rates)	HIGA (phasing in rates)	TOTAL LATE WORK PENALTY PAYMENT
Hour 1	\$0.71 (=40% of \$1.77)	\$1.67	\$2.38
Hour 2	\$0.71	\$1.67	\$2.38
Hour 3	\$0.71	\$1.67	\$2.38
Hour 4	\$0.71	\$1.67	\$2.38
Hour 5	\$0.71	\$1.67	\$2.38
Hour 6	\$0.71	\$1.67	\$2.38
Hour 7	\$0.71	\$1.67	\$2.38
Minimum Payment Due	\$1.05 (=40% of \$2.62)	No Minimum Payment is Specified	\$1.05*

* The minimum payment is provided in addition to the HIGA phasing in amount.

EXAMPLE 7

Tracy is a part-time guest services employee and she is required to do some of her ordinary hours of work on Wednesday from 10:00pm to 5:00am. In addition to receiving payment for the hours worked, Tracy would be entitled to receive night penalties. She would be entitled to receive \$4.97 (\$0.71 x 7 hours) for the Hotels Award phasing out rate and \$10.59 (\$1.12 x 2 hours + \$1.67 x 5) for the HIGA phasing in rate. The total of the night penalty would be \$15.56.

(b) Where the employee works ALL of their ordinary hours between Monday to Friday between midnight and 7am

An employee, other than a casual, who works ALL ordinary hours Monday to Friday between the hours of midnight and 7am shall receive the following payments:

	Hotels Award (phasing out rates)	HIGA (phasing in rates)	TOTAL LATE WORK PENALTY PAYMENT
Hour 1	\$0.80 (=40% of \$2.00)	\$1.67	\$2.47
Hour 2	\$0.80	\$1.67	\$2.47
Hour 3	\$0.80	\$1.67	\$2.47
Hour 4	\$0.80	\$1.67	\$2.47

Hour 5	\$0.80	\$1.67	\$2.47
Hour 6	\$0.80	\$1.67	\$2.47
Hour 7	\$0.80	\$1.67	\$2.47

NOTE: The minimum payment provided in the Hotels Award is applied as a payment **for any one day**. The Fair Work Ombudsman has confirmed in written advice to the Australian Hotels Association that '*any one day*' is to be considered on a per shift basis, regardless of whether the shift extends past midnight (ie into a new day). Therefore, where a roster provides for a shift from 6pm to 1am, for example, the minimum payment specified in point 2 above is not payable. This minimum payment would only be payable where the shift commenced at midnight or at some time after midnight.

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April 2013