

2013-2014-2015

The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

**Fair Work Amendment (Penalty Rates  
Exemption for Small Businesses) Bill  
2015**

**No.     , 2015**

*(Senators Leyonhjelm and Day)*

**A Bill for an Act to amend the *Fair Work Act 2009*,  
and for related purposes**



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## Schedule 1—Amendments

### *Fair Work Act 2009*

#### **1 Section 12**

Insert:

*excluded small business employer*: see section 23AA.

#### **2 Subsection 23(1)**

Omit “15 employees”, substitute “20 employees”.

#### **3 After section 23**

Insert:

#### **23AA Meaning of *excluded small business employer***

- (1) A small business employer is an *excluded small business employer* at a particular time if the employer employs fewer than 20 employees at that time in any of the following industries:
  - (a) restaurant and catering;
  - (b) hospitality;
  - (c) retail.
- (2) For the purpose of calculating the number of employees employed by the employer at a particular time:
  - (a) subject to paragraph (b), all employees employed by the employer at that time are to be counted; and
  - (b) a casual employee is not to be counted unless, at that time, he or she has been employed by the employer on a regular and systematic basis.
- (3) For the purpose of calculating the number of employees employed by the employer at a particular time, associated entities are taken to be one entity.

#### **4 Paragraph 139(1)(e)**

Before “penalty rates”, insert “subject to section 155A,”.

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1 **5 At the end of Division 3 of Part 2-3**

2 Add:

3 **155A Terms dealing with penalty rates payable by excluded small**  
4 **business employers**

5 A modern award must not include a term that has the effect of  
6 requiring an excluded small business employer to pay penalty rates  
7 to an employee for work performed for the employer, unless:

8 (a) the work:

9 (i) is performed on a weekend; and

10 (ii) is in addition to 38 hours of work that the employee has  
11 worked in the relevant week; or

12 (b) the work:

13 (i) is in a 24 hour period; and

14 (ii) is in addition to 10 hours of work that the employee has  
15 worked in that period; or

16 (c) the work is performed on a public holiday.

17 **6 At the end of Schedule 1**

18 Add:

19 **Part 3—Amendments made by the Fair Work**  
20 **Amendment (Penalty Rates Exemption for**  
21 **Small Businesses) Act 2015**  
22

23 **13 Definitions**

24 In this Part:

25 ***amended Act*** means this Act as amended by the *Fair Work*  
26 *Amendment (Penalty Rates Exemption for Small Businesses) Act*  
27 *2015*.

28 ***commencement*** means the commencement of this Part.

1 **14 Application of section 155A of amended Act**

2 Section 155A of the amended Act applies in relation to a modern  
3 award that is in operation on or after commencement, whether or  
4 not the award was made before commencement.