

## Form F46 – Application to vary a modern award

Fair Work Act 2009, ss.157–160

This is an application to the Fair Work Commission to make a modern award or make a determination varying or revoking a modern award, in accordance with Part 2-3 of the [Fair Work Act 2009](#).

### The Applicant



These are the details of the person who is making the application.

Title	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Phillip		
Surname	Ryan		
Postal address	27 Murray Crescent		
Suburb	Griffith		
State or territory	Australian Capital Territory	Postcode	2603
Phone number	0418 602 989	Fax number	
Email address	<a href="mailto:legal@aha.org.au">legal@aha.org.au</a>		

### If the Applicant is a company or organisation please also provide the following details

Legal name of business	Australian Hotels Association
Trading name of business	Australian Hotels Association
ABN/ACN	78 756 030 961
Contact person	Phillip Ryan

### Does the Applicant need an interpreter?



If the Applicant requires an interpreter (other than a friend or family member) in order to participate in conciliation, a conference or hearing, the Fair Work Commission will provide an interpreter at no cost.

Yes – Specify language

No

**Does the Applicant require any special assistance at the hearing or conference (e.g. a hearing loop)?**

Yes – Please specify the assistance required

No

**Does the Applicant have a representative?**



A representative is a person or organisation who is representing the applicant. This might be a lawyer or paid agent, a union or employer organisation, or a family member or friend. There is no requirement to have a representative.

Yes – Provide representative's details below

No

**Applicant's representative**



These are the details of the person or organisation who is representing the Applicant (if any).

Name of person			
Firm, organisation or company			
Postal address			
Suburb			
State or territory			
Phone number		Fax number	
Email address			

**Is the Applicant's representative a lawyer or paid agent?**

Yes

No

## 1. Coverage

### 1.1 What is the name of the modern award to which the application relates?



Include the Award ID/ Code No. of the modern award

- Hospitality Industry (General Award) 2010
- MA000009

### 1.2 What industry is the employer in?

Hospitality

## 2. Application

### 2.1 What are you seeking?

Specify which of the following you would like the Commission to make:

- a determination varying a modern award
- a modern award
- a determination revoking a modern award

### 2.2 What are the details of your application?

1. This Application is made pursuant to s.158 of the *Fair Work Act 2009* (**FW Act**).
2. The Applicant is an organisation registered under the relevant provisions of the *Fair work (Registered Organisations) Act 2009* and has standing to make this application under Item 1 of s.158 (1) of the FW Act.
3. The Application seeks a determination pursuant to s.157 of the FW Act varying the *Hospitality Industry (General) Award 2010* (**Hospitality Award**) to incorporate a new Schedule L to provide for award flexibility on a temporary basis during the COVID-19 Pandemic and the resulting public health orders.
4. The proposed variation is set out in Annexure A to this Application.
5. This Application is made with the consent of the United Workers Union.

Attach additional pages, if necessary.

### 2.3 What are the grounds being relied on?

Using numbered paragraphs, specify the grounds on which you are seeking the proposed variations.



You must outline how the proposed variation etc is necessary in order to achieve the modern awards objective as well as any additional requirements set out in the FW Act.

1. The Coronavirus COVID-19 (COVID-19) originated in Hubei Province, China over December 2019/January 2020.
2. In response the outbreak of COVID-19, the Commonwealth of Australia, as well as State and Territory Governments have imposed a range of restrictions on travel, mass gatherings and social gatherings.
3. From on or about 19 March 2020, the various orders issued by State and Territory Governments prohibited mass gatherings of 500 or more persons in a single undivided outdoor space at the same time, or of 100 or more persons in a single undivided indoor space at the same time, except for those services which were defined as essential services.
4. From 12:00pm on 23 March 2020, new 'social gathering' restrictions came into effect prohibiting a range of business categories from being open to the public. Relevantly to this application, this includes, *inter alia*:
  - pubs and registered clubs, except for the purposes of:
    - (i) selling food or beverages for persons to consume off the premises; or
    - (ii) if the premises include hotel or motel accommodation, providing that accommodation including by providing food or beverages to persons using that accommodation to consume in their rooms;
  - food and drink premises (other than pubs), except for the purposes of:
    - (i) selling food or beverages for persons to consume off the premises; or
    - (ii) if the premises are part of hotel or motel accommodation, providing food or beverages to persons using that accommodation to consume in their rooms;
  - casinos, except for the purposes of, if the premises include hotel or motel accommodation, providing that accommodation including by providing food or beverages to persons using that accommodation to consume in their rooms;
  - micro-breweries or small distilleries holding a drink on-premises authorisation under the *Liquor Act 2007* or cellar door premises, except for the purposes of selling food or beverages for persons to consume off the premises,
5. The Australian Hotels Association and the United Workers Union (**Parties**) have agreed to a proposed Schedule to provide flexibility for employers and employees.

6. The Parties submit that the variation is necessary in order to achieve the modern awards objective in the current circumstances and relies on:

- s.134 (1) (a) of the FW Act;
- s.134 (1) (c) of the FW Act;
- s.134 (1) (d) of the FW Act; and
- s.134 (1) (f) of the FW Act.

Attach additional pages, if necessary.

## Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	Phillip Ryan
Date	24 March 2020
Capacity/Position	National Director – Legal & Industrial Affairs



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

**PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS**

**Annexure A**



# DRAFT DETERMINATION

*Fair Work Act 2009*

s.157 – Application to vary a modern award to achieve the modern awards objective

## **Hospitality Industry (General) Award 2010**

(AM2020/\_\_\_\_\_)

PRESIDENT ROSS

XXXXX

XXXXX

\_\_\_\_\_ 2020

*Award schedule – COVID-19 pandemic*

A. Further to the decision [\_\_\_\_\_] issued by the Full Bench of the Fair Work Commission on \_\_\_\_\_ 2020, the above award is varied as follows:

1. In the Table of Contents add a new Schedule L – Award flexibility during the COVID-19 Pandemic.
2. Add the following Schedule L to the award:

### **Schedule L – Award flexibility during the COVID-19 Pandemic**

**L.1** This Schedule operates from 23 March 2020 until 30 June 2020. The operation of this Schedule may be extended by a further period of up to 3 months subject to the consent of the Australian Hotels Association and the United Workers Union.

**L.2** During the operation of this Schedule, the following provisions will apply:

#### **Classifications and Duties**

- (a) Employees will perform all duties that are within their skill and competency regardless of their classification under clause 19 and Schedule D, provided that the duties are safe and the employee is licensed and qualified to perform them, where necessary. Clause 25 – Higher duties – will apply to employees engaged on duties carrying a higher rate than their ordinary classification.

### **Hours of Work - Full-time and Part-time Employees**

- (b) Subject to sub-clause (d), and notwithstanding clause 11, a full-time employee may work an average of between 22.8 and 38 ordinary hours per week, as directed by their employer.
- (c) Subject to sub-clause (d), and notwithstanding clause 12.3(a), a part-time employee may work an average of 60% of their guaranteed hours per week, or an average of 60% of the guaranteed hours per week over the roster cycle, as directed by their employer.
- (d) Prior to any employer issuing any direction under sub-clause (b) or sub-clause (c), an employer must:
  - (i) Consult with the relevant employee/s in accordance with clause 8A – Consultation about changes to rosters or hours of work; and
  - (ii) If the affected employee/s are members of the United Workers Union, notify the United Workers Union of its intention to implement these arrangements; and
  - (iii) Continue to accrue annual leave and personal leave, and any other applicable accruals under this Award based on each full-time or part-time employee's ordinary hours of work prior to the commencement of this Schedule.

### **Annual leave**

- (e) Despite clauses 34.3, 34.7, 34.8 and 34.9, an employer may direct an employee to take annual leave upon 24 hours' notice. This does not prevent an employer and employee agreeing to the employee taking annual leave at any time.
- (f) For the avoidance of doubt, during the period of the operation of this Schedule, any employer and employee may agree to the taking of 'twice as much annual leave at half the rate of pay' as noted in s.55(4) of the *Fair Work Act 2009*, for all or part of any period of annual leave.

### **Dispute Resolution**

- (g) Any dispute regarding the operation of this Schedule may be referred to the Fair Work Commission in accordance with Clause 9 – Dispute Resolution.

B. This determination comes into effect on 23 March 2020.

PRESIDENT