



## Modern Awards Review 2023-24 (AM2023/21)

### Submission cover sheet

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5 February 2024

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## Modern Awards Review 2023-24 (AM2023/21)

### INTRODUCTION

The Fair Work Commission (**Commission**) has started a review of modern awards after receiving a request from the Minister for Employment and Workplace Relations. The Modern Awards Review 2023-24 (**Review**) will look at four priority topics:

- **Arts and Culture Sector** – this topic will look at which awards cover workers and the minimum standards in the arts and culture sector.
- **Job Security** – this topic will consider whether modern award provisions support the objective of promoting job security and the need to improve access to secure work across the economy.
- **Work and Care** – this topic will look at how award terms can impact workers with caring responsibilities.
- **Making the most commonly used awards easier to use** - this topic will invite interested parties to make proposals on how to do this, without reducing entitlements for workers.

The Australian Hotels Association (AHA) welcomes the opportunity to make a submission to the Commission, in response to the Job Security Discussion Paper of 18 December 2023 (**'the Discussion Paper'**).

The AHA confirms it can appear at the Commission's consultation hearings to discuss this submission in further detail and to assist in providing further information, if needed. Should any specific proposals be raised by other parties during this consultation process, AHA will gladly consult more closely on those proposals.

### THE AHA AND ITS MEMBERS

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1. The Australian Hotels Association (**AHA**) is an organisation of employers in the hotel and hospitality industry registered under the *Fair Work (Registered Organisations) Act 2009*. Its diverse membership of more than 5,600 businesses includes pub-style hotels plus three, four and five-star international accommodation hotels. AHA members provide a wide range of services to the Australian public including accommodation, food, beverage, wagering, gaming, retail liquor, functions, events, live music, and entertainment.
2. The AHA's members are serviced by branches located in every Australian state and territory and a Canberra-based national office. As well as being members of their respective state or territory branch, accommodation hotels are represented by the National Accommodation Division. The AHA

branches employ 15 lawyers and specialists providing advice to members on workplace relations, including advice on awards and the *Fair Work Act 2009 (the Act)*.

3. The Australian hotel industry is a 24/7 labour intensive service industry and is a key element of Australia's tourism industry. The makeup of the hotel workforce is extremely diverse and includes adults of all genders, ages and nationalities. The AHA member workforce comprises:
  - Over 300,000 workers.
  - 50% of members offer apprenticeships.
  - 60% of employees are female.
  - 65% of businesses are family owned with family members working in the business.

4. The hotel industry also draws on a diversity of skills including skilled, unskilled, and entry level workers. Occupations include:
  - Food, beverage, and retail staff
  - Chefs, cooks, and kitchenhands
  - Maintenance, security, cleaners, and room division
  - Managers, marketing, finance, and front office

Categories of employment percentages are:

- Casual - 55%
- Full time - 30%
- Part time - 12%
- Fixed term - 3%

Employee ages:

- 18 to 24 years - 36%
- 25 to 44 years - 39%
- 45 to 64 years – 24%
- 65 years plus -1%

5. The majority of the AHA's members operate under the *Hospitality Industry (General) Award 2020 (HIGA)*. Coverage is also provided by the *Restaurant Industry Award 2020 (RIA)*, *General Retail Industry Award 2020 (GRIA)* and a small number of enterprise agreements.

## JOB SECURITY

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6. The AHA acknowledges the object of the *Fair Work Act 2009 (Cth) ('the Act')* to "provide workplace relations laws that are fair to working Australians, promote job security and gender equality, are flexible for businesses, promote productivity and economic growth for Australian's future economic prosperity and take into account Australia's international labour obligations" (with emphasis).
7. As has been discussed at length in contemplation of the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 ('Closing Loopholes Bill')*, casual employment is a less secure form of employment, however it nonetheless remains the overwhelming preference of hospitality workers across the country, due in large part to the flexibility it offers and the additional 25% wage loading. This is despite the flexible part-time employment provisions available under the HIGA and the RIA, which retain flexibility for both the employee and employer, whilst affording traditional safeguards including guaranteed hours, minimum and maximum engagements, and payment for overtime.
8. The AHA respectfully submits that, whilst casual employment may be less secure than permanent employment types, it should not be considered *insecure* in all cases, as noted in paragraph 68 of the Discussion Paper.
9. Many casual hospitality workers work on a regular and systematic basis, according to their availability and circumstances, and the operational requirements of the employer. The regularity to

their employment affords the casual employee access to certain NES entitlements (e.g. parental leave).

10. For the casual employees who seek job security and who meet the eligibility criteria provided in the Act, the AHA agrees that conversion to permanent employment status should be available to them.
11. However, for the large number of casual employees who prefer to be engaged on a casual basis and who reject their employer's offer of casual conversion, the AHA would respectfully seek for caution to be exercised in any Award amendment which may erode the employee's choice about their own employment status. An employee who chooses to remain engaged on a casual basis should still be able to work regular hours in accordance with the Award/s, as they are currently drafted.
12. Further to the modern Award objective to improve access to secure work across the economy,<sup>1</sup> there are additional incentives that make casual employment attractive to a variety of employment groups, including:
  - a. The flexibility of casual employment often supports the needs of university students who balance their study commitments with a casual job to earn some extra money.
  - b. For school aged children who are entering the workforce for the first time, casual employment establishes their foothold in the labour market.
  - c. For parents returning to the workforce, casual employment allows increased flexibility to work around caring commitments.
  - d. For employees with disability, casual employment can reduce the possible barrier of a potential reduction or loss of the Disability Support Pension as a result of increased employment and affords maximum flexibility to assist the employee to prioritise their health and attend medical appointments as needed.
13. For the hospitality, retail and tourism industries, flexible work is a legitimate requirement to meet fluctuating levels of demand.<sup>2</sup> Employers require the participation of casual employment in its workforce, to meet surges in trade and to ensure the overall viability of their business during low trading periods. The AHA would seek for this flexibility for business to be kept in mind, further to the object of the Act, before and as any Award variation may be considered as part of this process. Without successful businesses, there can be no job security for workers.

## DISCUSSION QUESTIONS

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14. The AHA provides the following response to the discussion questions put forward in Chapter 5 of the Discussion Paper.
  1. *Are there specific provisions in the seven modern awards the subject of this review that parties consider are necessary to improve access to secure work across the economy?*
    - a. *Types or modes of employment;*
15. The AHA considers the flexible part-time provisions currently provided in clause 10 of both the HIGA and the RIA as the industry standard for improving access to secure work across the economy. Unfortunately, these flexible part-time provisions are not reflected in the GRIA or in the other

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<sup>1</sup> Section 134 of the Act.

<sup>2</sup> Discussion Paper at [68].

modern awards subject to this review. Consequentially, employers operating under these other awards are limited in the flexibility they can offer permanent employees.

16. For employees who have sought flexibility in their casual employment arrangements, this has traditionally seen such employees shy away from casual conversion, due to the rigidity of the part-time employment provisions. The AHA considers these flexible part-time employment provisions to be absolutely necessary to improve access to secure work across the economy.

*b. Rostering arrangements, including rostering restrictions*

17. The AHA submits that the award provisions can be improved to maximise the intended flexibility of rostering arrangements, depending on employment type. For example:

- a. Clause 10.7(b) of the HIGA and cl. 10.7(c) of the RIA require a part-time employee to receive 2 days off each week, which conflicts with the allowed averaging of a permanent part-time employee's guaranteed hours across a roster cycle ('averaging arrangement'). The restriction to provide two days off each week prevents the averaging of days off over a fortnight roster cycle (e.g. three days off one week and one day off the next week, in a two-week averaging arrangement). A better balance could be struck between the part-time employment safeguard and the flexibility afforded to employee and employer, without encroaching on the employee's job security.
- b. Clause 15.1(a) of the HIGA allows for an employer and a full-time employee to agree on the arrangement for working the average of 38 ordinary hours per week required for full-time employment. However, cl. 15.1(b) sets out the exhaustive list of such arrangements but is silent on the simplest of arrangements which is simply "38 hours worked over one week". This is counterintuitive to flexible modern work practices. Such an amendment could be made to the HIGA without negatively impacting on job security, to allow an agreement to be as flexible as working 38 hours over one week.

18. The AHA has put forward a number of proposals regarding rostering arrangements in our [submission](#)<sup>3</sup> for the 'Making awards easier to use' stream of this review which we believe are directly relevant to the job security stream. For the sake of brevity, these will not be repeated in this submission however the AHA is willing to speak to these during the consultation process.

19. The AHA does not propose any additional amendments to provisions in response to Discussion Question (c) – (e).

*2. Are there any additional specific award provisions that are consistent with the new modern awards objective? If so, parties are asked to consider and address whether it is relevant and necessary to vary any awards to include that or those specific award provision(s).*

20. As noted above, the AHA strongly recommends that the other modern awards subject to this review be varied, to carry over the HIGA and RIA's flexible part-time employment provisions which will incentivise casual conversion, to improve access to secure work and to maximise flexibility for both business and for their workers.

*3. Are there specific award provisions that are not consistent with the new modern awards objective? If so, parties are asked to address whether it is relevant and necessary to vary any awards to amend or remove that specific award provision.*

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<sup>3</sup> Available here - <https://www.fwc.gov.au/documents/sites/award-review-2023-24/am202321-sub-aha-221223.pdf>

21. The AHA does not have a submission in response to Discussion Question 3.

*4. Having regard to the new modern awards objective, should the exclusion of casual employees from accessing certain NES entitlements (such as paid personal leave) continue?*

22. Provided that there is no change to the ability to engage a casual employee as a 'regular casual employee', where the employer is able to continue offering casual employees regular hours under the relevant award, the AHA does not believe it is necessary to amend access to NES entitlements.

23. For any NES entitlements that are not payable to regular casual employees as defined in the Act, it is noted that casual employees receive an additional 25% casual loading to compensate them for such entitlements. As such, the AHA sees no compelling reason to amend these provisions and seeks for the status quo to continue.

*5. Should any of the awards be varied to supplement these NES entitlement gaps for casual employees?*

24. As no evidence has been put forward to identify a NES entitlement gap that is not compensated by the additional 25% casual loading, the AHA does not suggest any variation or supplementation at this time.

*6. Is there evidence that use of individual flexibility arrangements undermines job security?*

25. The AHA is not aware of any circumstance where individual flexibility arrangements undermine job security.

26. It is noted that an individual flexibility agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made. If such an agreement were to undermine job security, a reasonable view could be held that the agreement does not pass the better off overall test.

27. The AHA is not of the view that any of the following modern award standard clauses negatively impact job security, and does not suggest any variations at this time:

- a. Individual flexibility arrangements;
- b. Consultation about major workplace change;
- c. Consultation about changes to rosters or hours of work;
- d. Dispute resolution;
- e. Termination of employment; and
- f. Redundancy.

Thank you for the opportunity to have made this submission.

  
STEPHEN FERGUSON  
AHA NATIONAL CEO