



DRAFT DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards – *Hospitality Industry (General) Award*

2010 – substantive issues

(AM2017/59)

HOSPITALITY INDUSTRY (GENERAL) AWARD 2010

[MA000009]

Hospitality industry

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT MASSON
COMMISSIONER LEE

MELBOURNE, XX MONTH 2019

4 yearly review of modern awards – Hospitality Industry (General) Award 2010 – substantive issues

A. Further to the Full Bench decisions issued by the Fair Work Commission on 12 December 2018 [2018] FWCFB 7263 and 6 September 2019 [2019] FWCFB 6092, the above award is varied as follows:

1. By inserting the following definitions in clause 3.1 in alphabetical order:

accrued day off means a paid day off accrued in accordance with clause 29.1(a) and 29.1(c) that is not a rostered day off.

junior employee means an employee who is less than 21 years of age and who is not undertaking a nationally recognised traineeship or apprenticeship.

2. By inserting a new clause 14.12 as follows:

14.12 Competency based progression

(a) For the purpose of competency based wage progression in clause 20.4 an apprentice will be paid at the relevant wage rate for the next stage of their apprenticeship if:

(i) competency has been achieved in the relevant proportion of the total units of competency specified in clause 20.4 for that stage of the

apprenticeship. The units of competency which are included in the relevant proportion must be consistent with any requirements in the training plan; and

- (ii) any requirements of the relevant State/Territory apprenticeship authority and any additional requirements of the relevant training package with respect to the demonstration of competency and any minimum necessary work experience requirements are met; and
- (iii) either:

 - (A) the Registered Training Organisation (RTO), the employer and the apprentice agree that the abovementioned requirements have been met; or
 - (B) the employer has been provided with written advice that the RTO has assessed that the apprentice meets the abovementioned requirements in respect to all the relevant units of competency and the employer has not advised the RTO and the apprentice of any disagreement with that assessment within 21 days of receipt of the advice.
- (b) If the employer disagrees with the assessment of the RTO referred to in clause 14.12(a)(iii)(B) above, and the dispute cannot be resolved by agreement between the RTO, the employer and the apprentice, the matter may be referred to the relevant State/Territory apprenticeship authority for determination. If the matter is not capable of being dealt with by such authority it may be dealt with in accordance with the dispute resolution clause in this award. For the avoidance of doubt, disputes concerning other apprenticeship progression provisions of this award may be dealt with in accordance with the dispute resolution clause.
- (c) For the purposes of this clause, the training package containing the qualification specified in the contract of training for the apprenticeship, sets out the assessment requirements for the attainment of the units of competency that make up the qualification. The definition of “competency” utilised for the purpose of the training packages and for the purpose of this clause is the consistent application of knowledge and skill to the standard of performance required in the workplace. It embodies the ability to transfer and apply skills and knowledge to new situations and environments.
- (d) The apprentice will be paid the wage rate referred to in clause 14.12(a) from the first full pay period to commence on or after the date on which an agreement or determination is reached in accordance with clause 14.12(a)(iii) or on a date as determined under the dispute resolution process in clause 14.12(b).
- (e) If the apprentice disagrees with the assessment of the RTO referred to in clause 14.12(a), and the dispute cannot be resolved by agreement between the RTO, the employer and the apprentice, the apprentice may refer the matter to the relevant State/Territory apprenticeship authority for determination. If the matter is not capable of being dealt with by such authority it may be dealt with in accordance

with the dispute resolution clause in this award. For the avoidance of doubt, disputes concerning other apprenticeship progression provisions of this award may be dealt with in accordance with the dispute resolution clause.

3. By deleting clause 20.4 and inserting the following:

20.4 Apprentices wages

(a) Apprentices other than Waiting apprenticeship

- (i) A person who has completed a full apprenticeship for which there is a trade qualified classification provided for in this award, must be paid no less than the standard hourly rate for each hour worked.
- (ii) Except where clause 20.4(a)(iii) is applicable an employee will be paid the percentage of the standard hourly rate for each hour worked, in accordance with the following table:

Year	%
First	55
Second	65
Third	80
Fourth	95

(iii) Competency based wage progression

Where the relevant apprenticeship legislation allows competency based progression and the training contract does not specify otherwise, an employee apprenticed in a trade after < date of the Determination> will be paid the percentage of the standard hourly rate for each hour worked, in accordance with the following table:

(A) Four year apprenticeship (nominal term)

Stage of apprenticeship	Minimum training requirements on entry	% of the standard hourly rate
Stage 1	On commencement and prior to the attainment of the minimum training requirements specified for Stage 2	55
Stage 2	On attainment of 25% of the total competencies specified in the training plan for the relevant AQF Certificate III	65

Stage of apprenticeship	Minimum training requirements on entry	% of the standard hourly rate
	qualification; or 12 months after commencing the apprenticeship, whichever is the earlier	
Stage 3	On attainment of 50% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 12 months after commencing Stage 2, whichever is the earlier	80
Stage 4	On attainment of 75% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 12 months after commencing Stage 3, whichever is the earlier.	95

(B) Three year apprenticeship (nominal term)

Stage of apprenticeship	Minimum training requirements on entry	% of the standard hourly rate
Stage 1	On commencement and prior to the attainment of the minimum training requirements specified for Stage 2	55
Stage 2	On attainment of 25% of the total competencies specified in the training plan for the	65

	relevant AQF Certificate III qualification; or 9 months after commencing the apprenticeship, whichever is the earlier.	
Stage 3	On attainment of 50% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 9 months or after commencing Stage 2, whichever is the earlier	80
Stage 4	On attainment of 75% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 9 months after commencing Stage 3, whichever is the earlier.	95

(b) Waiting apprenticeship

- (i) Any person who has completed a full apprenticeship as a qualified tradesperson must be paid not less than the standard hourly rate for each hour worked.
- (ii) Except where clause 20.4(b)(iii) is applicable, an employee apprenticed in the waiting trade will be paid the relevant percentage or portion of the standard hourly rate for each hour worked, in accordance with the following table:

First six months	70%
Second six months	85%
Third six months	Midway between the total rate prescribed for food and beverage attendant grade 2 (waiter) in

	clause 20.1 and the standard hourly rate; and
Fourth six months	Midway between the total rate prescribed for third six months, above, and the standard hourly rate.

- (iii) Where the relevant apprenticeship legislation allows competency based progression and the training contract does not specify otherwise an employee apprenticed in the waiting trade after <date of the Determination> will be paid the percentage of the standard hourly rate for each hour worked, in accordance with the following table:

(A) Two year waiting apprenticeship (nominal term)

Stage of apprenticeship	Minimum training requirements on entry	% of the standard hourly rate
Stage 1	On commencement and prior to the attainment of the minimum training requirements specified for Stage 2	70
Stage 2	On attainment of 25% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 6 months after commencing the apprenticeship, whichever is the earlier.	85
Stage 3	On attainment of 50% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 6 months after commencing Stage 2, whichever is the earlier.	Midway between the total rate prescribed for food and beverage attendant grade 2 (waiter) in clause 20.1 and the standard hourly rate.
Stage 4	On attainment of 75% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 6	Midway between the total rate prescribed for stage 3, above, and the standard hourly rate.

	months after commencing Stage 3, whichever is the earlier.	
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(c) Proficiency payments – cooking trade

(i) Application

Proficiency pay as set out in clause 20.4(c)(ii) will apply to apprentices who have successfully completed their schooling in a given year.

(ii) Payments

Apprentices must receive the standard hourly rate during the latter half of the fourth year of the apprenticeship where the standard of proficiency has been attained on one, two or three occasions on the following basis:

(1) one occasion only:

- for the first nine months of the fourth year of apprenticeship, the normal fourth year rate of pay;
- thereafter, the standard hourly rate.

(2) on two occasions:

- for the first six months of the fourth year of apprenticeship, the normal fourth year rate of pay;
- thereafter, the standard hourly rate.

(3) on all three occasions:

- for the entire fourth year, the standard hourly rate.

(d) Proficiency payments – waiting trade

(i) Application

Proficiency pay as set out in clause 20.4(d)(ii) will apply to level 2 apprentices who have successfully completed their schooling in the first year.

(ii) Payments

Apprentices who have attained the standard of proficiency in their first year must receive the standard hourly rate for each ordinary hour worked during the latter half of the second year of apprenticeship.

(e) Adult apprentices

- (i)** The minimum hourly wage for an adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship must be 80% of the minimum hourly wage for Level 4 in clause 20.4(a) or 20.4(b), or the rate prescribed by clause 20.4(a) or 20.4(b) for the relevant year or stage of the apprenticeship, whichever is the greater.
- (ii)** The minimum hourly wage for an adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be the rate for the lowest adult classification in clause 20.1, or the rate prescribed by clause 20.4(a) or 20.4(b) for the relevant year or stage of the apprenticeship, whichever is the greater.
- (iii)** A person employed by an employer under this award immediately prior to entering into a training arrangement as an adult apprentice with that employer must not suffer a reduction in their minimum hourly wage by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least six months as a full-time employee or twelve months as a part-time or regular and systematic casual employee immediately prior to commencing the apprenticeship. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clause 20.1 or 20.3 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

4. By deleting clause 21.1(b)(i) and inserting the following:

- (i)** Where a cook or apprentice cook is required to use their own tools, the employer must pay an allowance of \$1.73 per day or part thereof up to a maximum of \$8.49 per week.

5. By deleting clause 21.1(h) and inserting the following:

(h) Working away from usual place of work

This clause applies where an employer requires an employee other than a casual to work at a place more than 80 kilometres from the employee’s usual place of work. In these circumstances the employer must pay the employee an amount equal to the cost of fares reasonably spent by the employee in travelling from the employee’s usual place of work to the new place of work.

6. By deleting the table appearing in clause 21.1(j) and inserting the following:

Allowance	Applicable Consumer Price Index
Meal allowance	Take away and fast foods sub-group
Clothing allowance	Clothing and footwear group
Equipment and tools allowance	Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group

Vehicle/travel allowance	Private motoring sub-group
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7. By deleting clause 21.2(a) and inserting the following:

(a) Fork-lift driver

- (i) In addition to the minimum hourly wage rate set out in clause 20.1, a fork-lift driver must be paid an additional allowance, per hour, equal to 1.5% of the standard hourly rate for all purposes.
- (ii) A part-time or casual fork-lift driver who was employed immediately prior to <date of determination> must, in addition to the minimum hourly wage rate set out in clause 20.1, be paid an additional allowance, per day, equal to 0.3% of the standard weekly rate, to a maximum of 1.5% of the standard weekly rate per week. A part-time or casual employee in receipt of the daily fork-lift driver allowance under this subclause may elect to receive the fork-lift driver allowance under subclause (i).

8. By deleting clause 26.5 and inserting the following:

26.5 Employees who are not paid by electronic transfer and whose rostered day off or accrued day off falls on a pay day must be paid their wages, if they so desire, before going off duty on the working day prior to their day off.

9. By renumbering clauses 27.2(d) and 27.2(e) as clauses 27.2(e) and 27.2(f).

10. By inserting a new clause 27.2(d) as follows:

- (d) Despite the requirement to take time off within 28 days of accruing it in clause 27.2 (c) an employee and an employer may agree to extend the period for taking the accrued time off to within 6 months of its accrual subject to the following:
 - (i) The agreement is recorded in writing and retained as an employee record;
 - (ii) The accrued time off is taken at a time or times within the period of 6 months agreed by the employee and the employer;
 - (iii) If the accrued time off is not taken within the period of 6 months, the employer must pay the employee for the accrued time off in the next pay period following those 6 months; and
 - (iv) If, on the termination of the employee's employment, accrued time off for working on a public holiday has not been taken, the employer must pay the employee for the accrued time off.

11. By deleting clause 29.1(a) and inserting the following:

29.1 Full-time employees

- (a) The average of 38 hours per week is to be worked in one of the following ways:

- a 19 day month, of eight hours per day;
- four days of eight hours and one day of six hours;
- four days of nine and a half hours per day;
- five days of seven hours and 36 minutes per day;
- 152 hours each four week period with a minimum of eight days off each four week period;
- 160 hours each four week period with a minimum of eight days off each four week period plus an accrued day off;
- 76 hours over a two week period with a minimum of four days off each two week period;
- any combination of the above.

12. By deleting clause 29.1(c) and inserting the following:

- (c) In addition to the conditions set out under clause 29.1(b), where the agreed hours of work arrangement provides for 160 hours per four week period with an accrued day off, the arrangement will be subject to the following:
- (i) No employee is to work more than 10 days in a row without a rostered day off.
 - (ii) Where practicable the accrued day off must be contiguous with an employee's rostered days off.
 - (iii) Accrued days off may be banked, up to a maximum of five days.
 - (iv) An employee may elect, with the consent of the employer, to take an accrued day off in part day amounts.
 - (v) If an accrued day off falls on a public holiday, then where practicable, the next day is to be taken as the accrued day off.
 - (vi) The entitlement to an accrued day off at the employee's ordinary hourly rate is subject to the following:
 - (A) Each day of paid leave, except annual leave and long service leave, and any public holiday occurring during the four week cycle must be regarded as a day worked for accrual purposes; and
 - (B) An employee who has not worked a complete four week cycle in order to accrue an accrued day off must be paid a pro rata amount

for credits accrued for each day worked in the cycle. The pro rata amount is 24 minutes pay for each eight hour day worked.

13. By deleting clause 30.2 and inserting the following:
- 30.2** The roster will be alterable by mutual consent at any time or by amendment of the roster on seven days' notice. Where practicable two weeks' notice of rostered day or days off or of accrued day off or days off should be given provided that the days off may be changed by mutual consent or through sickness or other cause over which the employer has no control.
14. By deleting clause 32.2(a) and inserting the following:
- (a) An employee other than a casual working on a public holiday will be paid for a minimum of four hours' work. A casual employee working on a public holiday will be paid for a minimum of two hours' work. Hours of work performed on the day immediately before a public holiday, or immediately after a public holiday, and that form part of one continuous shift, are counted as part of the minimum hours worked for the purposes of this clause.
15. By renumbering 32.2(c) as 32.2(d).
16. By inserting a new clause 32.2(c) as follows:
- (c) Despite the requirement to take time off within 28 days of accruing it in clause 32.2(b) an employee and an employer may agree to extend the period for taking the accrued time off to within 6 months of its accrual subject to the following:
- (i) The agreement is recorded in writing and retained as an employee record;
- (ii) The accrued time off is taken at a time or times within the period of 6 months agreed by the employee and the employer;
- (iii) If the accrued time off is not taken within the period of 6 months, the employer must pay the employee for the accrued time off in the next pay period following those 6 months; and
- (iv) If, on the termination of the employee's employment, accrued time off for working on a public holiday has not been taken, the employer must pay the employee for the accrued time off.'
17. By deleting clause 33.3(b) and inserting the following:
- (b) When a full-time or part-time employee works overtime on a rostered day off or an accrued day off the following apply:
- (i) Subject to clause 33.3(b)(ii), the employee shall be paid 200% of their ordinary hourly rate for at least four hours even if they work less than four hours.

- (ii) The four hour minimum payment does not apply to work which is part of the normal roster which began the day before the rostered day off or accrued day off or when overtime worked is continuous from the previous day's duty.

18. By deleting clause 37.1(b)(i) and inserting the following:

(b) Additional arrangements for full-time employees:

- (i) A full-time employee whose rostered day off or accrued day off falls on a public holiday must, subject to clause 32.2, either:
 - Be paid an extra days' pay; or
 - Be provided with an alternative day off within 28 days; or
 - Receive an additional day's annual leave.

19. By deleting clause 39 and inserting the following:

39. Provision of employee accommodation and meals

39.1 Right to make deductions

Subject to clauses 39.2 and 39.3, an employer may deduct an amount from the wages of an employee for the provision of either meals or accommodation or both.

39.2 Deductions not to be unreasonable

Any deduction made under clause 39 must not be unreasonable in the circumstances.

39.3 Deductions for employees under 18 years of age

Deductions must not be made under clause 39 from the wages of an employee who is under 18 years of age unless the deductions have been agreed to in writing by the employee's parent or guardian.

39.4 Deductions for meals

An employer may only deduct an amount from an employee's wages for providing the employee with a meal if:

- (a) the employee does not live in accommodation provided by the employer; and
- (b) the meal is provided during the employee's normal working hours; and
- (c) the employee has been informed of the amount that will be deducted from the employee's wages for the meal and has consented to the meal being provided.

39.5 Deductions for accommodation or accommodation and meals—Adult employees

An employer may deduct from the wages of an adult employee, or the wages of a junior employee on adult rates, the amounts specified in column 2 of Table 1- Employees on adult rates for the service specified in column 1 provided by the employer.

Table 1—Employees on adult rates

Column 1	Column 2
Service provided by employer	Deduction \$ per week
Single room and 3 meals a day	215.63
Shared room and 3 meals a day	210.24
Single room only, no meals	204.85
Shared room only, no meals	199.46

NOTE: The ‘Single room and 3 meals a day’ amount is calculated at 25% of the standard weekly rate. The following internal relativity is then applied:

	%
Single room and 3 meals a day	100
Shared room and 3 meals a day	97.5
Single room only, no meals	95.0
Shared room only, no meals	92.5

39.6 Deductions for accommodation or accommodation and meals—Junior rates

An employer may deduct from the wages of a junior employee on junior rates aged as specified in column 2 of **Table 2 – Employees on junior rates**, the amount specified in column 4 for the service specified in column 1 provided by the employer.

Table 2—Employees on junior rates

Column 1	Column 2	Column 3	Column 4
Service provided by employer	Age	Deduction	Deduction per week
		% of adult deduction	\$
Single room and 3 meals a day	15 yrs & under	45	97.03
	16 yrs	55	118.60
	17 yrs	70	150.94
	18 yrs	80	172.50
	19 yrs	90	194.07
Shared room and 3 meals a day	15 yrs & under	45	94.61
	16 yrs	55	115.63
	17 yrs	70	147.17

Column 1 Service provided by employer	Column 2 Age	Column 3 Deduction	Column 4 Deduction per week
		% of adult deduction	\$
	18 yrs	80	168.19
	19 yrs	90	189.22
Single room only; no meals	15 yrs & under	45	92.18
	16 yrs	55	112.67
	17 yrs	70	143.40
	18 yrs	80	163.88
	19 yrs	90	184.37
Shared room only; no meals	15 yrs & under	45	89.76
	16 yrs	55	109.70
	17 yrs	70	139.62
	18 yrs	80	159.57
	19 yrs	90	179.51

39.7 Amount of deduction for meals

An employer may deduct an amount of \$8.21 from an employee’s wages for providing the employee with a meal.

39.8 Adjustment of amount of deduction for meals

- (a) At the time of any adjustment to the standard rate, the amount specified in clause 39.7 (or that amount as increased under this clause) will be increased by an adjustment factor.
- (b) The adjustment factor is the percentage movement in the consumer price index figure for the Take away and fast foods expenditure class published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0):
 - (i) for the first increase, since [date of commencement of clause 39.7] and
 - (ii) for any subsequent increase, since the amount was last increased under this clause.

20. By deleting the definition of food and beverage attendant grade 2 in clause D.2.1 of Schedule D and inserting the following:

Food and beverage attendant grade 2 means an employee who has not achieved the appropriate level of training and who is engaged in any of the following:

- supplying, dispensing or mixing of liquor including the sale of liquor from the bottle department;
- assisting in the cellar or bottle department;

- undertaking general waiting duties of both food and/or beverage including cleaning of tables
- receipt of monies;
- attending a snack bar;
- engaged on delivery duties; and
- taking reservations, greeting and seating guests.

21. By deleting the definition of food and beverage attendant grade 3 in clause D.2.1 of Schedule D and inserting the following:

Food and beverage attendant grade 3 means an employee who in addition to the tasks performed by a **Food and beverage attendant grade 2** is engaged in any of the following:

- the operation of a mechanical lifting device;
- attending a wagering (e.g. TAB) terminal, electronic gaming terminal or similar terminal;
- full control of a cellar or liquor store (including the receipt, delivery and recording of goods within such an area);
- mixing a range of sophisticated drinks;
- supervising food and beverage attendants of a lower grade; and
- training food and beverage attendants of a lower grade.

22. By deleting Schedule H.1(d) and inserting the following:

(d) Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off or an accrued day off provided in this award, does not work, the employee will be taken to be a on a public holiday for such hours and paid their ordinary rate of pay for those hours.

23. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation from **XX MONTH 2019**. In accordance with s.165(3) of the *Fair Work Act 2009* these items do not take effect until the start of the first full pay period on or after **XX MONTH 2019**.

PRESIDENT

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