



STATEMENT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Plain language re-drafting – Hospitality Industry (General) Award 2010 (AM2016/15, AM2014/272)

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT HATCHER
COMMISSIONER HUNT

MELBOURNE, 22 JANUARY 2018

4 yearly review of modern awards – plain language project – Hospitality Industry (General) Award 2010 – plain language re-drafting of award-specific clauses.

[1] In this Statement we set out the next steps in the plain language project in relation to re-drafting the *Hospitality Industry (General) Award 2010* (the current award) following the conference held on 20 December 2017.

[2] A plain language exposure draft of the *Hospitality Industry (General) Award 2017*¹ was first published on 27 April 2017. Submissions and reply submissions were received in relation to the published draft and a further plain language exposure draft,² containing amendments to agreed terms, was published 22 August 2017. A Statement³ was issued on the same date inviting interested parties to file further information in respect of matters raised by the drafter in response to the initial submissions. A revised Summary of Submissions⁴ was published on 8 September 2017.

[3] A conference was held on 12 September 2017⁵ (the September conference) to discuss the summary of submissions. The parties confirmed which items had been resolved and which remained outstanding.

[4] A Statement⁶ setting out the status of items raised and providing details of other matters to be dealt with in relation to the plain language exposure draft was published on 25 October 2017 (the October Statement). A revised plain language exposure draft (PLED),⁷ Summary of Submissions⁸ and a document setting out the outstanding issues were published with the October Statement.⁹ The parties were invited to provide submissions about matters raised in the October Statement and a revised Summary of Submissions¹⁰ was published on 15 December 2017.

[5] Further submissions were received from the following parties:

- AHA on behalf of AHA, AAA and MIMAA (20 November 2017);¹¹
- ABI&NSWBC (21 November 2017);¹² and

- United Voice (20 November 2017).¹³

[6] A conference was held on 20 December 2017¹⁴ (the December conference) to discuss the parties' submissions and scheduling of future proceedings. The following organisations were represented at the conference:

- Australian Hotels Association (AHA);
- Accommodation Association of Australia (AAA);
- Motor Inn, Motel and Accommodation Association (MIMAA);
- United Voice;
- ABI and New South Wales Business Chamber (ABI&NSWBC); and
- Business SA.

[7] Parties confirmed the status of items listed in the Summary of Submissions published on 15 December 2017.

[8] A revised PLED and Summary of Submissions reflecting the status of each item as a result of the December conference are published with this Statement. The updated status of each item is set out below.

(i) *Withdrawn*

[9] Items 1, 2, 3, 4 (in part), 7, 8 (in part), 16, 18, 21, 22, 31, 32A, 33 (in part), 36, 38, 44, 57, 61, 67, 72, 74, 78, 79, 80, 87, 92 and 94 of the Summary of Submissions¹⁵ published on 15 December 2017 have been withdrawn.

(ii) *Resolved*

[10] Items 4 (in part), 5, 6, 8 (determined in part), 9, 10, 11, 13, 20, 23, 24, 25, 26, 27, 28, 32, 37, 38A, 40, 42, 45, 47, 50, 51, 52, 53, 54, 55, 58, 64, 66, 68 (in part), 70, 75, 76, 81, 82, 83, 88, 88A, 89, 90 (in part), 91, 95 and new items 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109 of the Summary of Submissions¹⁶ published on 15 December 2017 have been resolved, either as a result of a party's submissions being accepted, by the adoption of a proposal advanced by the drafter or by the adoption of a proposal advanced by the Full Bench.

(iii) *Outstanding*

[11] Items 12, 14, 15, 17, 19, 29, 30, 33 (in part), 34, 35, 39, 41, 43, 46, 48, 49, 56, 59, 60, 62, 63, 65, 67A, 68 (in part), 69, 71, 73, 77, 84, 85, 86, 90 (in part), and 93 of the Summary of Submissions¹⁷ published on 15 December 2017 remain outstanding.

[12] In scheduling discussions during the December conference¹⁸ parties were notified that we intended to divide outstanding issues into two groups which would be dealt with over two further conferences which will be held on 12 and 23 February 2018. When deciding how to group issues we took into consideration their general relatedness, overlap and impact on other clauses and the amount of time that may be required to discuss the matters. Matters related to part-time and casual employment have been allocated to the second conference to enable

interested parties time to consider the amendments made in the PLED to give effect to the Part-time and Casual employment determination.

[13] We intend to discuss the following issues at the first conference on 12 February 2018:

- apprentice wage rates (items 39, 41 and 43);
- payment of wages (item 46);
- allowances (items 56, 59, 60 and new item 60A);
- annual leave (items 67A, 68 and 69);
- deductions (item 71);
- classification structure (items 73 and 77);
- summary of hourly rates of pay (items 84, 85 and 86);
- summary of monetary allowances (item 90); and
- school-based apprentices (item 93).

[14] We intend to discuss the following issues at the second conference on 23 February 2018:

- part-time employment (item 12);
- casual employment (items 14, 15, 17 and 19);
- hours of work (items 29 and 30);
- breaks (items 33, 34 and 35);
- overtime (items 62, 63 and 65);
- amendments arising from the part-time and casual employment full bench determination ([PR598473](#)) (items PTC 1 to PTC 6); and
- amended wording resulting from other Full Bench proceedings (new item 110).

[15] Issue papers will be published providing further information about the items listed in the agenda's for each of the February conferences. An agenda for the each conference is set out at **Attachment A** and **Attachment B** to this Statement.

Items resulting from Part-time and Casual employment full bench determination ([PR598473](#))

[16] As a part of the Part-time and Casual employment common issues (A2014/196 & 2014/197) a full bench issued a determination varying a number of award-specific clauses in the current award. The part-time employment clause was substituted in its entirety and amendments were made to the casual employment, hours of work, overtime and public holiday clauses.

[17] As a number of the items in the Part-time and Casual employment determination affect the outstanding items in the plain language drafting proceedings, amendments have been made to the PLED to incorporate the determination issued. A revised PLED is published with this Statement. The drafter has made amendments to the determination in order to reflect the plain language Guidelines, for consistency of terminology within the PLED and to incorporate the substantive changes arising from that determination into the provisions of the PLED. The plain language amendments to the determination have been highlighted in tracked changes.

[18] Notes have been included in the summary of submissions document to indicate where a technical and drafting issue may have been affected by the outcome of the Part-time and Casual Employment common issue. An additional table has been added to the summary of submissions document which includes the proposed amendments arising from the Determination (with item numbers PTC-1 to PTC-6). This table also appears at **Attachment C** to this Statement.

[19] Interested parties are invited to file submissions in relation to items PTC-1 to PTC-6 by **4.00 pm, Thursday 8 February 2018**. Reply submissions are due by **4.00 pm, Thursday 15 February 2017**. These items will be discussed at the 23 February 2018 conference along with other outstanding technical and drafting issues relating to part-time and causal employment.

Items resulting from other Full Bench Proceedings

[20] New item 110 relates to wording in certain provisions which have been amended as a result of decisions in other plain language re-drafting matters and in common issue matters. These amendments are in addition to the amendments made to the clause 10—Part-time employment and clause 11—Casual employment as a result of the Determination¹⁹ issued on 12 December 2017.

[21] Clauses 18.1 and 18.3, and the note under the Schedule B title have also been amended as a result of changes made to equivalent clause in the Clerks award plain language proceedings. Notes have been made in the summary of submissions to reflect this.

Items that overlap with substantive proceedings

[22] A matter number has been created for the substantive issues relating to the current award (AM2017/59). A Mention to discuss the scheduling arrangements for the hearing and determination of the substantive matters in respect of the Hospitality Industry Award 2010 is listed for **9:30am, Monday 12 February 2018**.

[23] The purpose of the mention is to discuss scheduling arrangements for the hearing and determination of the substantive issues. As set out in the notice of listing for AM2017/59, the parties are requested to file proposed draft directions for discussion at the Mention and are to indicate whether they intend to file any witness evidence in the proceedings by no later than **4.00pm, Thursday 8 February 2018**. All material should be sent to amod@fwc.gov.au.

[24] During the technical and drafting process parties have identified some items that bear similarity to substantive issues. These include items 34, 56 and 77 of the technical and drafting summary of submissions.

[25] In relation to item 34, Business SA²⁰ submitted that the current provisions should be retained because of the substantive changes in clause 16 of the PLED. As item 34 overlaps with items 33 and 35, we will deal with this matter as part of the plain language technical and drafting process unless otherwise requested.

[26] In relation to item 56 United Voice²¹ submitted that clause 26.10(c) is not a term that may be included in a modern award and the Commission does not have the power to include a term such as clause 26.10(c) in a modern award under s.151 of the *Fair Work Act 2009*, to the extent that it permits an employer to deduct a sum from an employee's pay. The AHA²² submitted that this item would be more appropriately dealt with as a substantive issue in [AM2014/272](#) [AM2017/59] because it concerns a term that may or may not be allowed in a modern award.

[27] In relation to item 71, the AHA²³ submitted that the draft clauses should reflect that the value of the deduction is applied per meal provided to the employee and not per week and later submitted²⁴ that the plain language redrafting presents an appropriate opportunity to clarify the intention of the meal deduction amount as a deduction per meal. They submitted that such a clarification is consistent with Plain Language Guidelines. They stated that this matter is also raised as part of [AM2014/272](#) [AM2017/59] and that they intend to pursue the item as a substantive issue if it is not accepted as part of the plain language technical and drafting stage.

[28] Business SA, United Voice and AHA are directed to confer with other parties and elect whether their respective claims (34, 56 and 77) should be addressed under the substantive or technical and drafting proceedings by **4.00pm, Thursday 8 February 2018**.

Next steps

[29] Interested parties should review the revised exposure draft published with this Statement in respect of the Part-time and Casual employment determination and make any submissions by **4.00 pm, Thursday 8 February 2018**. Reply submissions are due by **4.00 pm, Thursday 15 February 2017**. See paragraphs [16] to [19]. All material should be sent in a Word document to amod@fwc.gov.au.

[30] Interested parties should confer in relation to the items that overlap between substantive and technical and drafting matters as set out in paragraphs [22] to [28] by **4.00pm, Thursday 8 February 2018**.

PRESIDENT

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<PR599726>

¹ [Plain language exposure draft - Hospitality Industry \(General\) Award 2017 - published 27 April 2017](#)

² [Revised plain language exposure draft – Hospitality Industry \(General\) Award 2017 - published 22 August 2017](#)

³ [\[2017\] FWCFB 4118](#)

⁴ [Hospitality Summary of Submissions - published 8 September 2017](#)

⁵ [12 September 2017 conference transcript](#)

⁶ [\[2017\] FWC 5402](#) – published 25 October 2017

⁷ [Revised plain language exposure draft - Hospitality Industry \(General\) Award 2017 - published 25 October 2017](#)

⁸ [Hospitality Summary of Submissions - published 25 October 2017](#)

⁹ [Hospitality Outstanding Issues - published 25 October 2017](#)

¹⁰ [Hospitality Summary of Submissions – published 15 December 2017](#)

¹¹ [AHA, AAA and MIMAA Submissions – 20 November 2017](#)

¹² [ABI&NSWBC Submissions – 21 November 2017](#)

¹³ [United Voice Submissions – 20 November 2017](#)

¹⁴ [20 December 2017 conference transcript](#)

¹⁵ [Hospitality Summary of Submissions – published 15 December 2017](#)

¹⁶ [Hospitality Summary of Submissions – published 15 December 2017](#)

¹⁷ [Hospitality Summary of Submissions – published 15 December 2017](#)

¹⁸ [20 December 2017 conference transcript](#) – PNs 10-11, 170-172 and 224-230

¹⁹ [PR598473](#) – published 12 December 2017

²⁰ [Business SA Submissions – 14 June 2017](#)

²¹ [United Voice Submissions – 8 June 2017](#)

²² [AHA, AAA and MIMAA Submissions – 20 November 2017](#)

²³ [AHA Submissions – 13 June 2017](#)

²⁴ [AHA, AAA and MIMAA Submissions – 20 November 2017](#)

Attachment A—Agenda for first conference – 9.30am, Monday 12 February 2018

1. Apprentice wage rates (items 39, 41 and 43);
 - inclusion of a formula to calculate part-time apprentice hourly rates or clarification that the rates contained in the clause are the rates payable to a full-time apprentice at clauses 19.1, 19.2 and 19.5;
 - inclusion of the words “as a qualified tradesperson” in clause 19.1(b) after the word “apprenticeship” for consistency with clause 19.2(b); and
 - significant re-wording of clauses 19.3 and 19.4 and its effect on the intention and the interpretation of the clause.
2. Payment of wages (item 46);
 - retention of the words “if they so desire” in the PLED.
3. Allowances (items 56, 59, 60 and new item 60A);
 - whether clause 26.10(c) in the PLED is a term that is permitted in a modern award under section 136 of the Fair Work Act 2009 (Cth);
 - wording of clause 26 to reflect the current award and the inclusion of the allowances an all-purpose allowance; and
 - whether the fork-lift allowance should be expressed as on an hourly basis.
4. Annual leave (items 67A, 68 and 69);
 - the definition of shiftworker;
 - retention of the words ‘at or’ in clause 30.5(a) of the PLED; and
 - use of the terms ‘unpaid leave’ and ‘leave without pay’.
5. Deductions (item 71);
 - whether deductions for provision of employee meal should be expressed as per meal or per week.
6. Classification structure (items 73 and 77);
 - inclusion of wage level for each classification in brackets after the classification title; and
 - deletion of ‘or who has the appropriate level of training’ from Schedule A.2.2(f), (g) and (h).
7. Summary of hourly rates of pay (items 84, 85 and 86);
 - inclusion of the ‘ordinary hourly rate’ definition in the current award;
 - drafting of ‘Note 1’ in Schedule B.1.1 of the PLED; and
 - inclusion of the word ‘general’ in the term ‘general employees’.
8. Summary of monetary allowances (item 90);
 - drafting of the Note in Schedule C.3 of the PLED.
9. School-based apprentices (item 93);
 - inclusion of the wording of Schedule G.12 of the current award at Schedule D of the PLED.

ATTACHMENT B—Agenda for second conference – 9.30am, Friday 23 February 2018

1. Part-time employment (item 12, PTC 1);
 - amendments made as a result of [\[2017\] FWFB 3541](#) and [PR5984733](#).
2. Casual employment (items 14, 15, 17 and 19, PTC 2);
 - amendments as a result of [\[2017\] FWFB 3541](#), [PR5984733](#) and the [Clerks PLED](#) published on 1 December 2017.
3. Hours of work (items 29 and 30, PTC 3);
 - addition of the words “other than rostered days off” in clause 15.2(i); and
 - definition of the word “remote location” in clause 15.2.
4. Breaks (items 33, 34 and 35);
 - inclusion of clause 31 of the current award;
 - inclusion of the wording at clause 16 of the current award; and
 - inclusion of the qualifying words at clauses 31.1 and 31.2 of the PLED.
5. Overtime (items 62, and 65, PTC 4 & 5);
 - the addition of the word “reasonable” at clause 28.1;
 - the substitution of the words “relevant minimum hourly rate” for “ordinary hourly rate” in clause 28.4; and
 - amendments made as a result of [\[2017\] FWFB 3541](#) and [PR5984733](#).
6. Amended wording determined by the Full Bench (new item 110);
 - new wording proposed for clause 18.1 and 18.3 as a result of changes made to the [Clerks PLED](#) published on 1 December 2017; and
 - new wording clause 28 in accordance with [PR5984733](#).
7. New wording proposed for 34.4 in accordance with [PR5984733](#) (PTC 6).

ATTACHMENT C—Table of amendments arising from the part-time and casual employment full bench determination ([PR598473](#))

ITEM	STATUS	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
PTC-1	Outstanding	FWC	PR598473	Cl. 10	<p>Part-time employment</p> <p>Clause 10 has been replaced in its entirety to reflect item 1 of PR598473.</p> <p>Previous PLED clause 10.7 (Part-time hours of work) has been moved to clause 15.2 to give effect to the terms of the determination.</p> <p>Plain language amendments to this determination have been made by the plain language drafter as reflected in tracked changes.</p>		Clause 10 substituted by PR598473
PTC-2	Outstanding	FWC	PR598473	Cl. 11.3	<p>Casual employment</p> <p>Clause 11.3 replaced in accordance with item 2 of PR598473.</p> <p>Plain language amendments to this determination have been made by the plain language drafter as reflected in tracked changes.</p>		Clause 11.3 substituted by PR598473
PTC-3	Outstanding	FWC	PR598473	Cl. 15.2	<p>Ordinary hours of work</p> <p>Previous PLED clause 10.7 (Part-time hours of work) has been moved to clause 15.2 to give effect to the terms of the determination.</p>		Clause 10.7 relocated to clause 15.2. Clause 15.2 amended by PR598473

ITEM	STATUS	PARTY	DOCUMENT	CLAUSE (PLED)	SUMMARY OF ISSUE	THEIR REF	NOTES
					Lead-in words to clause 15.2 have been replaced in accordance with item 6 PR598473 .		
PTC-4	Outstanding/ Referred	FWC	PR598473	Cl. 28.1	Overtime Clause 28.1 updated to reflect item 7 of PR598473 . Reasonable overtime has been referred to the plain language re-drafting Full Bench for further consideration (see [2017] FWCFB 6884).		Clause 28.1 amended by PR598473 Reasonable overtime has been referred to the plain language re-drafting Full Bench for further consideration (see [2017] FWCFB 6884).
PTC-5	Outstanding	FWC	PR598473	Cl. 28.2	Overtime Clause 28.2 updated to reflect items 8, 9 and 10 of PR598473 . Plain language amendments to this determination have been made by the plain language drafter as reflected in tracked changes.		Clause 28.2 amended by PR598473
PTC-6	Outstanding	FWC	PR598473	Cl. 34.4	Public holidays arrangements for part-time employees Clause 34.4 updated to reflect item 11 of PR598473 .		Clause 34.4(d) amended by PR598473