



AUSTRALIAN HOTELS ASSOCIATION

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12 November 2015

The Honourable Justice Ross AO
President
Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

By email: amod@fwc.gov.au

Dear Justice Ross

AM2014/217 and others
Group 3 and Group 4 Awards
Outline of Proposed Changes to the *Hospitality Industry (General) Award 2010*

1. We refer to the Directions issued on 2 November 2015 in relation to the four yearly review of modern awards for Group 3 and 4 awards.
2. These submissions are made of behalf of the Australian Hotels Association (“the AHA”). The AHA also acts on behalf of the Accommodation Association of Australia and the Motor Inn and Motels Accommodation Association.
3. In response to Directions issued on 23 January 2015, the AHA informed the Fair Work Commission, in correspondence dated 2 March 2015, of the claims and variations it will pursue in respect of the *Hospitality Industry (General) Award 2010* (“the HIGA”).
4. In accordance with the Directions of 2 November 2015, these submissions present a written outline as to the scope of the additional claims and variations the AHA will pursue in respect of the HIGA.
5. The Attachment to this correspondence presents a consolidated list of all claims and variations the AHA will pursue in respect of the HIGA.

Additional Claims and Variations

Minimum Hourly Wage and Ordinary Hourly Rate – their Scope and Application in the HIGA

6. The AHA submits that the absence of minimum hourly rates for all classifications in the HIGA, a deficient definition of “ordinary hourly rate” and the use of an undefined term to calculate overtime rates creates ambiguity and complexity in the application of the HIGA.

7. Clause 4.1 of the HIGA sets out the coverage of the modern award by reference to the employees employed within the hospitality industry and within the classifications set out in Schedule D. Schedule D separates the classifications into three categories, namely: introductory, general and casino gaming classifications. Included in the general classifications is the Managerial Staff (Hotels) classification.
8. Clause 10.1 of the HIGA provides that the employees to whom the HIGA applies will be employed in one of following three categories of employment: full-time, part-time or casual. There is no limitation which restricts particular classifications to specific categories of employment. That is, any classification can be employed in any category. This is reinforced in clause 12.1 of the HIGA which states that “*an employer may employ part-time employees in any classification in this award.*”
9. Clause 20 of the HIGA sets out the minimum wages for adult employees as follows:
 - a. Introductory and General classifications (other than the Managerial staff (Hotels) classification) (clause 20.1);
 - b. Managerial Staff (Hotels) classification (clause 20.2); and
 - c. Casino Gaming classifications (clause 20.3).
10. Clause 20 of the HIGA also provides for minimum wages for apprentices (clause 20.4) and junior employees (clause 20.5) which are expressed as percentages of the relevant adult minimum wages.
11. The deficiency in the definition of ordinary hourly rate, as referred to above is its limitation to employees whose classification falls within clause 20.1.
12. This limitation of this definition to classifications within clause 20.1 leads to ambiguities arising when applying clauses which refer to the defined term “ordinary hourly rate” to either:
 - a. Adult employees whose classification falls within clauses 20.2 or 20.3; and/or
 - b. Apprentice and junior employees whose minimum hourly wage rate is calculated under clauses 20.4 or 20.5.

For example, see clauses 31.4, 32.2 (b) and 32.2 (c) of the HIGA.

13. A further ambiguity arises in the calculation of penalty rates pursuant to clause 32.1 of the HIGA. Clause 32.1 sets out the penalty rate percentages of the minimum wage rate for work being performed on particular days by reference to clause 20. Clause 20 of the HIGA is not consistent in its expression of minimum wages. Clause 20 expresses the minimum wages for prescribed periods as follows:
 - a. General Classifications (other than Managerial Staff (Hotels) – weekly and hourly;
 - b. Managerial Staff (Hotels) – annually;
 - c. Casino Gaming – weekly
 - d. Apprentice – weekly

The ambiguity arises as a consequence of clause 32.1 not specifying the minimum hourly wage is to be used, or how to calculate the minimum hourly wage in circumstances where the minimum wage rate is not expressed as a minimum hourly wage.

14. The use of term “normal rate of pay” in clause 33.3 of the HIGA raises an ambiguity as to the calculation of overtime rates, as it is not a defined term in the HIGA.
15. It is the AHA’s view that the correct approach to calculating the overtime rate is to apply the overtime loading/percentage to the relevant employee’s ordinary hourly rate.
16. Accordingly, the AHA proposes variations of the following nature to the HIGA:
 - a. Expand the definition of “ordinary hourly rate” in clause 3.1 to encompass all classifications within the HIGA;
 - b. Include a minimum hourly wage for Managerial Staff (Hotels) in clause 20.2;
 - c. Include minimum hourly wages for all levels within the Casino Gaming classifications as set out in clause 20.3;
 - d. Include references to the “Standard Hourly Rate” in clause 20.4;
 - e. Remove the reference to “minimum wage rate” in clause 32.1 and replace with “minimum hourly wage” or “ordinary hourly rate” depending on the outcome of the variation sought in paragraph a; and
 - f. Remove references to “normal rate of pay” and replace with “ordinary hourly rate” in clause 33.3.
17. It is the AHA’s view that the ambiguities identified above make the HIGA difficult to understand and apply. Accordingly, the variations sought by the AHA are intended to make the HIGA simple and easy to understand and apply which is consistent with the modern awards objective (see s134(1)(g) of the *Fair Work Act 2009*).
18. As the proposed variations are technical in nature and do not impact upon an employee’s minimum entitlements, the scope of the AHA’s evidence on these matters will comprise detailed written submissions.

Clause 27.2(c) - Salaries Absorption (Managerial Staff (Hotels))

19. The AHA will pursue a variation to HIGA clause 27.2(c). Currently this clause provides that where salaried Managerial Staff work on a public holiday, they are entitled to paid time off that is of equal length to the time worked on the public holiday. The clause requires the accrued paid time off to be taken within 28 days of accruing it.
20. The AHA’s variation is to include, within this clause, wording to enable the ability for an employer and an employee to agree to take the paid time off accrued in accordance with the clause outside of the 28 day timeframe currently provided for.
21. The AHA submits that the ability for an employer and employee to agree to extend the 28 day timeframe would:
 - a. Allow greater flexibility so that the paid time off can be taken at a time that meets workplace and operational demands; and
 - b. Allow for the paid time off to be taken at a time that suits the circumstances of the employee, for example, by tacking the paid time off onto a period of leave that is outside of the 28 days; and
 - c. Remove the existing ambiguity as to the preservation of accrued time off that is not taken within 28 days of accrual.
22. The variation the AHA will pursue is consistent with the modern awards objective (see s134(1)(d) of the *Fair Work Act 2009*).

23. The scope of the AHA's evidence will be by detailed written submissions and witness evidence that attests to, among other things, a) and b) above.

Clause 32.2(a) - Public Holidays

24. The AHA will pursue a variation to HIGA clause 32.2(a) to clarify that the:
- a. Minimum four hours payment for permanent employees who work on a public holiday; and
 - b. Minimum two hours payment for casual employees who work on a public holiday;
- refers to the hours worked during a shift, not only to the hours worked on the day that is a public holiday.
25. Currently the clause does not state this, and it is the AHA's submission that the ambiguity arising from the current wording of clause 32.2(a) makes the HIGA difficult to understand and apply.
26. The variation the AHA will pursue will alleviate that confusion and ensure consistency of interpretation.
27. Further, the variation is consistent with the modern awards objective (see s134(1)(g) of the *Fair Work Act 2009*).
28. The scope of the AHA's evidence will be by detailed written submissions and witness statements.

Clause 32.2(b) - Public Holidays

29. The AHA will pursue a variation to HIGA clause 32.2(b). Currently this clause provides that employees working on a public holiday may, by agreement, perform such work at their applicable ordinary hourly rate plus:
- a. A 50% additional loading; and
 - b. Equivalent paid time added to the employee's annual leave, or, one day off instead of such public holiday provided during the week in which such holiday falls.
30. This clause also provides that the holiday may be allowed within 28 days of such holiday falling due.
31. The AHA's variation is to include, within this clause, wording to enable the ability for an employer and an employee to agree to take the one day instead of the public holiday outside of the 28 day timeframe currently provided for.
32. The proviso to this ability is for the employer to make all reasonable attempts to provide the one day instead of the public holiday during the same week in which the public holiday falls.
33. The AHA submits that, subject to the proviso provided above at 32, the ability for an employer and employee to agree to extend the 28 day timeframe would:
- a. Allow greater flexibility so that the one day instead of the public holiday can be taken at a time that meets workplace and operational demands; and

- b. Allow one day instead of the public holiday to be taken at a time that suits the circumstances of the employee, for example, by tacking the one day instead of the public holiday onto a period of leave that is outside of the 28 days; and
 - c. Remove the existing ambiguity as to the preservation of the one day off instead of the public holiday that is not taken within the 28 day timeframe.
34. The variation the AHA will pursue is consistent with the modern awards objective (see s134(1)(d) of the *Fair Work Act 2009*).
35. The scope of the AHA's evidence will be by detailed written submissions and witness evidence that attests to a) and b) above.

New Clause – Abandonment of Employment

36. The AHA will pursue the insertion of an abandonment of employment clause in the HIGA. The clause will be based on the current abandonment of employment clause as it appears in the *Manufacturing and Associated Industries and Occupations Award 2010*.
37. The scope of the AHA's evidence will be by:
- a. Detailed written submissions
 - b. Current and past workplace relations legislation
 - c. Hospitality industry data regarding employee turnover
 - d. Witness evidence.

Referral to a Full Bench

The Directions seek an indication whether any of the additional substantive claims and variations raised in this submission should be referred to a separately constituted Full Bench. The AHA does not believe that the claims and variations outlined in this submission should be referred to a Full Bench.

Any query in relation to this matter should be directed to Ms Joanna Minchinton at the AHA (Queensland Branch). Ms Minchinton can be contacted on (07) 3221 6999 or by email at jminchinton@qha.org.au.

Yours faithfully,



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ATTACHMENT

AHA sought variations in respect of the *Hospitality Industry (General) Award 2010*:

Clause	Title	Summary
As per AHA correspondence dated 2 March 2015		
3	Definitions	Insertion of new/amended definitions for a 'catering employee'; a 'motel employee'; an 'accrued rostered day off'; and a 'liquor service employee'.
13.3	Payment for casual employees	Amendment to clause 13.3 to provide consistency with clause 26 – payment of wages.
14	Apprentices	Introduction of a competency based pay scale for apprentices.
14 and Schedule F	Apprentices and Trainees	The introduction of an exclusion to an apprentice or trainee undertaking nationally recognised training being subject to the liquor service employee definition
15	Juniors	Amendment to the junior rates structures to reflect a single junior rates structure.
20.2	Minimum wages	Introduction of base rates of pay for part time and casual employees within the Managerial staff (Hotels) classification.
21.1(b)	Clothing, equipment and tools allowance	Provision for a security bond for the cost of identified employer property provided to the employee as part of their employment. The amended clause will provide detail on the resulting administrative arrangements including refunds.
21.3	Allowances	Amendment clarifying the compensation and duration of work.
29.1	Full-time employees	Amendment of the averaging arrangements to take into account industry and work environment/location specific needs.
31	Breaks	An amendment to clarify the concept of shift length versus work performed for the purposes of attracting additional paid breaks.
32.3	Other penalties	An amendment to clarify the way in which the penalty is paid for a part hour worked (as based on Fair Work Ombudsman advice).
33	Overtime	The introduction of time of in lieu arrangements where overtime is performed.
33.3	Overtime rates	An amendment to reflect the term 'ordinary rate of pay' which is defined at clause 3.
38	Deductions	Provision to make deductions in circumstances of employee negligence.
39.2	Deduction for accommodation and meals for adult employees	A restructure of the employer provided accommodation and meals deduction table to accurately reflect the types of accommodation provided and appropriate deduction amounts.
Schedule D	Classifications	An amendment to insert the relevant wage level in brackets after each classification listed to remove ambiguity.

Schedule D	Classifications	Clarification of the duties a Front Office Grade 1 employee, and a Clerical Grade 3 employee, can undertake.
X.X	Multi-hire arrangements	The introduction of a clause allowing permanent employees to work casual shifts via a multi-hire arrangement.
Additional claims and variations sought – as per the Directions dated 2 November 2015		
3.1, 20.2, 20.3, 20.4, 32.1, 33.3		Clarification of the scope and application of the term 'ordinary hourly rate' as it appears in the HIGA
27.2(c)	Salaries Absorption (Managerial Staff (Hotels))	Insert the ability for an employer and employee to agree to a timeframe in excess of 28 days.
32.2(a)	Public Holidays	Clarify that when considering the minimum four hours payment for permanent employees, and two hours payment for casuals, hours that have been worked on a non-public holiday during the same shift are counted toward the minimum hours of work.
32.2(b)	Public Holidays	Insert the ability for an employer and employee to agree to a timeframe in excess of 28 days.
X.X	Abandonment of Employment	The introduction of a clause concerning when an abandonment of employment occurs.