



22 March 2019

The Associate to Justice Ross AO
Fair Work Commission
Level 4, 11 Exhibition Street,
MELBOURNE VIC 3000

By email: amod@fwc.gov.au;

Dear Associate,

RE: FOUR YEARLY REVIEW OF MODERN AWARDS: PLAIN LANGUAGE RE-DRAFTING (AM2016/15)

We refer to the above matter and the Statement issued by the Fair Work Commission on 28 February 2019 ([2019] FWCFB 1255) (**Statement**).

In response to paragraph [28] of the Statement, we agree with the provisional view as it relates to the *Hospitality Industry (General) Award 2010* (**Hospitality Award**).

In response to paragraph [85] of the Statement, we submit as follows:

- (i) We do not object to clause 34.3 of the Hospitality Award being varied to include the model term. In doing so, we have assumed that subparagraph (i) is referring to directions to take excessive leave in accordance with clause 34.8; and
- (ii) The meaning of service and continuous service is defined in s.22 of the *Fair Work Act 2009*, and is clear that unpaid leave, whether taken at the request of the employee or as a result of a close-down at the initiative of the employer, does not count as service.

Yours faithfully,

PHILLIP RYAN
National Director – Legal and Industrial Affairs