



30 May 2018

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

By email: amod@fwc.gov.au

Dear Justice Ross

RE: 4 YEARLY REVIEW OF MODERN AWARDS—PLAIN LANGUAGE RE-DRAFTING (AM2016/15 AND AM2014/272)

1. We refer to the above matter and the Decision issued by the Fair Work Commission ('Commission') on 21 May 2018. This submission is made on behalf of the Australian Hotels Association, the Accommodation Association of Australia and the Motor Inn, Motel and Accommodation Association (the "Associations") in relation to:

- (i) Item 46;
- (ii) Item 69;
- (iii) Item PTC-1;
- (iv) Items 33-35.

(i) Item 46 – Payment of Wages

2. The Associations do not have any objection to the proposed change to clause 23.5 of the Plain Language Exposure Draft of the *Hospitality Industry (General) Award 2010* ('PLED') as published on 22 May 2018.

(ii) Item 69 – Special leave without pay arrangements for certain catering employees

3. The Associations do not have any objection to the proposed change to clause 30.5 of the PLED.

(iii) Item PTC-1 – Part-time employment

4. The Associations provide the following comments on Attachment A to the Decision:

- a) Clause 10.7(a) – the Associations submit that the wording of 10.7(a) as it appeared in the PLED published on 22 January 2018 (as it was then numbered clause 10.6(a)) is consistent with the terminology used elsewhere in Clause 10, and that the words "times at which they have agreed to be available" as appearing in Attachment 1 be replaced with the earlier wording "employee's availability".
- b) Clause 10.11 – the Associations note a change from the PLED published on 22 January 2018 (as then numbered 10.10) where the word "employee" where it appears

between the words “then” and “may alter”, has been replaced with the word “they”. The Associations submit that the change in word is unnecessary and detracts from the intention of the plain language re-drafting of the HIGA.

- c) Clause 10.12 – the Associations submit that the words “the alteration to” be deleted, or the words “as altered” be deleted as both sets of words are not necessary.
- d) Clause 10.14 – the Associations submit that a comma should be inserted after the words “A part-time employee” as well as after the words “1 January 2018”.

(iv) Items 33-35 – Breaks

5. The Associations provide the following comments on Attachment B to the Decision:

- a) With regard to Table 2, the Association notes in column 2 that in some rows the sentences end with a full stop, and it does not in other rows. The Associations highlight this for consistency.
- b) Clause 16.4 – it appears that the word “clause” is missing from appearing before the numbers “16.5”.
- c) Clause 16.5(a) – the hourly rate payable to the employee is the rate of pay applicable at the time of working. The proposed wording is unnecessarily descriptive and could lead to an incorrect payment. For example, at the end of employee’s 6th hour of work, it is 11.30pm on a Friday. The employee is not provided with an unpaid meal break, and the employee works until 1.30am on Saturday. The literal reading of this clause means that for the work performed from midnight to 1.30am, the employee continues to receive their Friday rate of pay (for the purposes of clause 16.5(a)), instead of receiving the Saturday rate of pay from midnight. The Associations submit that the wordings in current HIGA clause 31.4, being that the employee “shall be paid at the rate of 50% of the ordinary hourly extra for each hour or part of an hour” satisfactorily explains the additional payment due to an employee who is not provided with an unpaid meal break.
- d) Example – in the first example the reference to Table 2 should reflect the wording in Column 2, that is, it should read from the third line in the example after the bolded word “break(s)” that she is entitled to a “30 minute unpaid break (to be taken...)”
- e) Example of a Sunday shift – in this example, point (a) contains an error by referring to the ‘Saturday shift rate’. It should refer to the Sunday shift rate.

6. 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@gha.org.au.

Yours faithfully,



**PHILLIP RYAN
NATIONAL DIRECTOR, LEGAL AND INDUSTRIAL AFFAIRS**