



20 November 2017

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

By email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

Dear Justice Ross

**4 yearly review of modern awards—plain language re-drafting  
(AM2016/15 and AM2014/272)**

1. We refer to the above matter and the Commission's statement of 25 October 2017, [2017] FWC 5402 ("Statement") regarding the plain language re-drafting of the *Hospitality Industry (General) Award 2010* ("HIGA").
2. The Statement invites further submissions in relation to various matters.
3. These submissions are made on behalf of the Australian Hotels Association, the Accommodation Association of Australia and the Motor Inn, Motel and Accommodation Association (the "Associations") with respect to:
  - A. The categorisation of the items listed in paragraphs 7 and 8 of the Statement;
  - B. The list of outstanding items listed in paragraph 9 of the Statement;
  - C. The revised Summary of Submissions published 25 October 2017; and
  - D. The revised plain language exposure draft ("PLED") published 25 October 2017 and the additional five items listed at paragraph 53 of the Statement.

**A. Items listed in paragraphs 7 and 8 of the Statement**

4. Aside from specific items that have been referred to below in paragraphs 5, 6 and 7, the categorisation of the Associations raised items as withdrawn (paragraph 7) is correct.
5. With regard to item 4 as referred to in paragraph 7 of the Statement, the 2 matters as advised as withdrawn by the Associations at the 12 September 2017 Conference ("Conference") related to a change of wording in paragraph (a) and Note 1 of the PLED.

6. With regard to item 33, the Associations withdrew their comments regarding the use of the word “rest” in PLED clause 16, however we continue to express our concern with clauses 16.2 and 16.6 and Table 2.
7. With regard to item 66, the Associations did not formally withdraw the submission with respect to PLED clause 28.2 at the Conference. However, due to the drafter’s proposed new wording in respect of item 64 (as raised by Business SA), as proposed in the Summary of Submissions dated 8 September 2017, and, as reflected as clause 28.3 in the PLED, the Associations concerns at item 66 has been resolved.
8. At paragraph 8 of the Statement, aside from specific items that have been referred to below, the categorisation of the Associations raised items as resolved is correct.
9. With regard to item 7, the Associations advise that this item will not be pressed.
10. With regard to item 65, the Associations submit that the variation sought at this item was linked with our position regarding item 7 as it related to submissions made in the HIGA award specific matter (AM2014/272). The Associations submission in relation to item 65 was linked to their submissions that the Ordinary Hourly Rate definition as it currently exists in the HIGA would be retained, and therefore had relevance for the purposes of overtime calculations.
11. In noting this, the Associations present an alternative solution to item 65, which is to use the words “relevant minimum hourly rate” instead of “ordinary hourly rate” where it appears in PLED clause 28.4.
12. With regard to item 68, it is noted that it has been resolved in part through the addition of the word “functions” in PLED clause 30.5(a). The outstanding part of item 68, as identified in paragraph 9, relates to the omission of the words “at or” from the PLED. This omission results in a different interpretation.
13. With regard to item 88, the new wording added to the relevant Schedules should refer to clause 28.5, not clause 28.3.
14. With regard to item 90, the Associations submission of 13 June 2017 highlighted a drafting error with respect to circumstances where the penalty rates in C.3 would not be payable, that is, where an employee is paid in accordance with clause 24 or clause 25. The drafter’s comments in the Summary of Submissions dated 8 September 2017 proposed wording to resolve this error.
15. It has come to the Associations attention that the proposed wording “...and may not be payable to an employee to whom clause 24 applies.” is not correct. PLED clause 24.5 clearly states that an annualised salary satisfies “this award in relation to penalty rates and overtime”. This means that the penalty rates at C.3 are not payable where an employee is paid in accordance with clause 24.5.
16. The Associations submit that the wording be amended in the PLED to reflect this, and suggests the following words:  
  
*“Note: Penalty rates are not payable to an employee to whom clause 25 – Salaries absorption (Managerial Staff (Hotels)) applies, and an employee to whom clause 24 – Annualised salary arrangements applies.”*

**B. Outstanding items in paragraph 9 of the Statement**

17. The outstanding items listed in the Statement are correctly categorised. The Associations comments on several of those items is set out below.
18. With regard to the remaining part of item 4, the Associations concern with the omission of the “Appropriate Level of Training” definition for the casino gaming classification has been addressed in the PLED published on 25 October 2017, and is acceptable to the Associations to resolve the concern with the item.
19. With regard to item 19, as noted in the Summary of Submissions, the wording in the PLED as published on 25 October 2017 is acceptable to the Associations to resolve the concern with the item.
20. With regard to item 22, the Associations withdraws this item.
21. With regard to item 40, the drafter’s comment to include the words “(other than an adult apprentice)” after “apprentice” in clauses 19.1(a) and 19.2(a) and where first occurring in clauses 19.3 and 19.4 is acceptable to the Associations to resolve the concern with the item. It is noted that the additional wording does not appear in the PLED of 25 October 2017.
22. With regard to item 47, the comments in the Summary of Submissions are noted. However, the Associations restate that for the purposes of clarity, and ease of reading, clause 24.5 should specifically state the relevant clauses for penalty rates and overtime. They are clause 29 (penalty rates) and clause 28 (overtime).
23. With regard to item 51, the drafter’s comments are noted, and also queried. The drafter states that including the term loading after the words “annual leave” is inconsistent with a move away from using the term *loading*. Inclusion of the word “loading” will aid the reader to understand the reference, which, at clause 30.3 is termed as a loading.
24. The Associations have raised this item as part of the HIGA award stage review (AM2014/272) and flags that they intends to pursue this award clarification as part of those proceedings if it is not dealt with at this stage. The Associations submits that it is appropriate to address the clarification sought in this process given the intention of the plain language drafting of modern awards.
25. With regard to item 53, as noted in the Summary of Submissions, the wording in the PLED as published on 25 October 2017 is acceptable to the Associations to resolve the concern with the item.
26. With regard to item 56, as previously submitted, the Associations reserves their position. The Associations further submits that this item is more appropriately dealt with as part of the HIGA award specific matter (AM2014/272) as it concerns a term that may or may not be allowed in a modern award.
27. With regard to item 61 the Associations withdraws this item.
28. With regard to item 63, the Associations refers to the Fair Work Commission Full Bench decision of 5 July 2017 in [2017] FWCFB 3541 and notes the decision and impending casual overtime wording may result with some amendment being necessary in the PLED.

29. With regard to item 71, the Associations notes the drafter's comments that the PLED reflects the current award wording. The Associations submits that the plain language drafting of the HIGA presents an appropriate opportunity to clarify the intention of the meal deduction amount as a deduction per meal – as such a clarification is consistent with the plain language guidelines.
30. The Associations have raised this clarification as part of AM2014/272 and intends to pursue the item at this stage if not accepted as part of this stage.
31. With regard to item 73, as with item 51, the Associations have previously flagged their intention to pursue this matter to aid the reader to understand that the grade level of a position does not necessarily equal the wage level for that position. The Associations believe this to be a valuable clarification exercise.
32. The Associations note the drafter's comments with respect to the inclusion of a "Note to A.1", and submits the Note should include additional wording that highlights to readers that the grade of a position does not translate to the wage level of the position. The Associations submits such clarification is consistent with the intention of the plain language guidelines.

**C. Revised Summary of Submissions**

33. The Associations have provided feedback on the revised Summary of Submissions via the comments in relation to sections A and B above.
34. In summary, the following items as raised by the Associations are resolved/withdrawn:
  - a) Item 4 (in whole);
  - b) Item 7;
  - c) Item 19;
  - d) Item 22;
  - e) Item 40 (subject to wording inclusion in the PLED);
  - f) Item 53;
  - g) Item 61;
  - h) Item 66.

**D. Revised Plain Language HIGA Exposure Draft**

35. In response to the Commission's request in relation to the PLED released on 25 October 2017, the Associations submits:
  - a) As per paragraph 18 of this submission, the addition of the Appropriate Level of Training definition at Schedule A.3.1 is acceptable;
  - b) The new wording of clause 28.1 in the PLED is acceptable, however, it is noted that as per paragraph 28 above, this clause is likely to be amended as a result of the decision, and will not be settled until this time;
  - c) The variations detailed at paragraphs 32 to 40 of the Statement are acceptable;
  - d) The variations detailed at paragraphs 47 to 50 of the Statement are acceptable;
  - e) The Associations have no further submissions to make in respect of Schedule D and confirms their proposal. They notes that the Associations proposed definition of a Training Agreement has been included in the PLED, with the remaining terminology changes to clauses 12.6, 12.7 and 12.8 still to be made.

36. Other Comments on the PLED are:

- a) In revised clause 6 (individual flexibility arrangements) clause 6.8 refers to clause 6.9 where the correct reference is clause 6.7(b);
- b) At clause 15.4 in the PLED it is noted that at (b), the word “work” as it appeared at the end of the sentence, has been replaced with the words “ordinary hours”. The Associations express their concerns with this amendment, and submits the original (pre amended) wording be retained. It is common practice in the hospitality industry to roster both ordinary and additional hours where those additional hours are known to be required, for example, due to an upcoming event such as a Melbourne Cup function, or due to a period of annual leave cover.
- c) At new clause 21.2, there is an incorrect reference to the *Restaurant Industry Award 2010*, where the correct reference is the *Hospitality Industry (General) Award 2010*.
- d) At clause 29, table 11, the penalty rates payable for full-time and part-time employees on a Sunday and Public Holiday require adjustment to reflect the current penalty rates payable in the existing HIGA. In addition, the casual employee public holiday rate requires adjustment.

### **Summary**

37. The Associations seek to assist the Commission with respect to the plain language re-draft of the HIGA, and will participate in the Conference on 20 December 2017.

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](mailto:jminchinton@qha.org.au).

Yours faithfully,



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