

7 December 2018

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

By email: amod@fwc.gov.au

Dear Associate,

**RE: 4 YEARLY REVIEW OF MODERN AWARDS — HOSPITALITY
INDUSTRY (GENERAL) AWARD 2010 (AM2014/272, AM2017/59)**

We refer to the above matter and the Directions issued by the Fair Work Commission (“the Commission”) on 29 November 2018, which were subsequently varied by the Commission on 5 December 2018.

In relation to Direction 2, we hereby **attach** an Amended Draft Consent Determination.

In relation to Direction 3, which relates to Items 20 and 28, we hereby confirm:

- (i) Items 20 and 28 are dealt with in the Amended Draft Consent Determination at paragraph 9 (in relation 20) and paragraph 14 (in relation to item 28); and
- (ii) There are no further issues in dispute in relation to Items 20 and 28.

Yours faithfully,

PHILLIP RYAN
Australian Hotels Association

NATALIE DABARERA
United Voice

PRXXXXXX

DRAFT DETERMINATION

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 yearly review of modern awards

(AM2014/272)

HOSPITALITY INDUSTRY (GENERAL) AWARD 2010

[MA000009]

Further to the Full Bench decision issued by the Fair Work Commission on XX XXX 2018¹, the above award is varied as follows:

A. It is ordered that the *Hospitality Industry (General) Award 2010* be varied as follows:

1. In clause 3.1, inserting the following definitions:

“accrued rostered day off means a paid day off accrued in accordance with clause 29.1(a) and 29.1(c) that is not a rostered day off”.

“junior employee means an employee under the age of 21 who is not undertaking a nationally recognised traineeship or apprenticeship”.

2. By inserting a new sub clause 14.12:

“14.12 Competency based progression

(a) For the purpose of competency based wage progression in clause 20.4 an apprentice will be paid at the relevant wage rate for the next stage of their apprenticeship if:

(i) competency has been achieved in the relevant proportion of the total units of competency specified in clause 20.4 for that stage of the apprenticeship. The units of competency which are included in the relevant proportion must be consistent with any requirements in the training plan; and

(ii) any requirements of the relevant State/Territory apprenticeship authority and any additional requirements of the relevant training package with respect to the demonstration of competency and any minimum necessary work experience requirements are met; and

(iii) either:

(A) the Registered Training Organisation (RTO), the employer and the apprentice agree that the abovementioned requirements have been met; or

(B) the employer has been provided with written advice that the RTO has assessed that the apprentice meets the abovementioned requirements in respect to all the relevant units of competency and the employer has not advised the RTO and the apprentice of any disagreement with that assessment within 21 days of receipt of the advice.

¹ [Insert decision reference]

- (b) If the employer disagrees with the assessment of the RTO referred to in clause 14.12(a)(iii)(B) above, and the dispute cannot be resolved by agreement between the RTO, the employer and the apprentice, the matter may be referred to the relevant State/Territory apprenticeship authority for determination. If the matter is not capable of being dealt with by such authority it may be dealt with in accordance with the dispute resolution clause in this award. For the avoidance of doubt, disputes concerning other apprenticeship progression provisions of this award may be dealt with in accordance with the dispute resolution clause.
- (c) For the purposes of this clause, the training package containing the qualification specified in the contract of training for the apprenticeship, sets out the assessment requirements for the attainment of the units of competency that make up the qualification. The definition of “competency” utilised for the purpose of the training packages and for the purpose of this clause is the consistent application of knowledge and skill to the standard of performance required in the workplace. It embodies the ability to transfer and apply skills and knowledge to new situations and environments.
- (d) The apprentice will be paid the wage rate referred to in clause 14.12(a) from the first full pay period to commence on or after the date on which an agreement or determination is reached in accordance with clause 14.12(a)(iii) or on a date as determined under the dispute resolution process in clause 14.12(b).
- (e) If the apprentice disagrees with the assessment of the RTO referred to in clause 14.12(a), and the dispute cannot be resolved by agreement between the RTO, the employer and the apprentice, the apprentice may refer the matter to the relevant State/Territory apprenticeship authority for determination. If the matter is not capable of being dealt with by such authority it may be dealt with in accordance with the dispute resolution clause in this award. For the avoidance of doubt, disputes concerning other apprenticeship progression provisions of this award may be dealt with in accordance with the dispute resolution clause”.

3. By deleting clause 20.4 and inserting the following:

“20.4 Apprentice wages

(a) Apprentices other than Waiting apprenticeship

- (i) A person who has completed a full apprenticeship for which there is a trade qualified classification provided for in this award, must be paid no less than the standard hourly rate for each hour worked.
- (ii) Except where clause 20.4(a)(iii) is applicable an employee will be paid the percentage of the standard hourly rate for each hour worked, in accordance with the following table:

Year	%
First	55
Second	65
Third	80
Fourth	95

(iii) Competency based wage progression

Where the relevant apprenticeship legislation allows competency based progression and the training contract does not specify otherwise, an employee apprenticed in a trade after **<insert date of the Determination>** will be paid the percentage of the standard hourly rate for each hour worked, in accordance with the following table:

(A) Four year apprenticeship (nominal term)

Stage of apprenticeship	Minimum training requirements on entry	% of the standard hourly rate
Stage 1	On commencement and prior to the attainment of the minimum training requirements specified for Stage 2	55
Stage 2	On attainment of 25% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 12 months after commencing the apprenticeship, whichever is the earlier.	65
Stage 3	On attainment of 50% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 12 months after commencing Stage 2, whichever is the earlier.	80
Stage 4	On attainment of 75% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 12 months after commencing Stage 3, whichever is the earlier.	95

(B) Three year apprenticeship (nominal term)

Stage of apprenticeship	Minimum training requirements on entry	% of the standard hourly rate
Stage 1	On commencement and prior to the attainment of the minimum training requirements specified for Stage 2	55
Stage 2	On attainment of 25% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 9 months after commencing the apprenticeship, whichever is the earlier.	65

Stage 3	On attainment of 50% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 9 months after commencing Stage 2, whichever is the earlier.	80
Stage 4	On attainment of 75% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 9 months after commencing Stage 3, whichever is the earlier.	95

(b) Waiting apprenticeship

- (i) Any person who has completed a full apprenticeship as a qualified tradesperson must be paid not less than the standard hourly rate for each hour worked.
- (ii) Except where clause 20.4(b)(iii) is applicable, an employee apprenticed in the waiting trade will be paid the relevant percentage or portion of the standard hourly rate for each hour worked, in accordance with the following table:
- | | |
|-------------------|--|
| First six months | 70% |
| Second six months | 85% |
| Third six months | Midway between the total rate prescribed for food and beverage attendant grade 2 (waiter) in clause 20.1 and the standard weekly rate; and |
| Fourth six months | Midway between the total rate prescribed for third six months, above, and the standard weekly rate. |
- (iii) Where the relevant apprenticeship legislation allows competency based progression and the training contract does not specify otherwise an employee apprenticed in the waiting trade after **<insert date of the Determination>** will be paid the percentage of the standard hourly rate for each hour worked, in accordance with the following table:

(A) Two year waiting apprenticeship (nominal term)

Stage of apprenticeship	Minimum training requirements on entry	% of the standard hourly rate
Stage 1	On commencement and prior to the attainment of the minimum training requirements specified for Stage 2	70
Stage 2	On attainment of 25% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 6 months after commencing the apprenticeship, whichever is the earlier.	85

Stage 3	On attainment of 50% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 6 months after commencing Stage 2, whichever is the earlier.	Midway between the total rate prescribed for food and beverage attendant grade 2 (waiter) in clause 20.1 and the standard hourly rate
Stage 4	On attainment of 75% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 6 months after commencing Stage 3, whichever is the earlier.	Midway between the total rate prescribed for stage 3, above, and the standard hourly rate

(c) Proficiency payments—cooking trade

(i) Application

Proficiency pay as set out in clause 20.4(c)(ii) will apply to apprentices who have successfully completed their schooling in a given year.

(ii) Payments

Apprentices must receive the standard hourly rate during the latter half of the fourth year of the apprenticeship where the standard of proficiency has been attained on one, two or three occasions on the following basis:

(1) one occasion only:

- for the first nine months of the fourth year of apprenticeship, the normal fourth year rate of pay;
- thereafter, the standard hourly rate.

(2) on two occasions:

- for the first six months of the fourth year of apprenticeship, the normal fourth year rate of pay;
- thereafter, the standard hourly rate.

(3) on all three occasions:

- for the entire fourth year, the standard hourly rate.

(d) Proficiency payments—waiting trade

(i) Application

Proficiency pay as set out in clause 20.4(d)(ii) will apply to level 2 apprentices who have successfully completed their schooling in the first year.

(ii) Payments

Apprentices who have attained the standard of proficiency in their first year must receive the standard hourly rate for each ordinary hour worked during the latter half of the second year of apprenticeship.

(e) Adult apprentices

(i) The minimum hourly wage for an adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship must be 80% of the minimum hourly wage for Level 4 in clause 20.4(a) or 20.4(b), or the rate prescribed by clause 20.4(a) or 20.4(b) for the relevant year or stage of the apprenticeship, whichever is the greater.

(ii) The minimum hourly wage for an adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be the rate for the lowest adult classification in clause 20.1, or the rate prescribed

by clause 20.4(a) or 20.4(b) for the relevant year or stage of the apprenticeship, whichever is the greater.

- (iii) A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum hourly wage by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least six months as a full-time employee or twelve months as a part-time or regular and systematic casual employee immediately prior to commencing the apprenticeship. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clause 20.1 or 20.3 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

- 4. By deleting clause 21.1(b)(i), and inserting the following:

“Where a cook or apprentice cook is required to use their own tools, the employer must pay an allowance of \$1.73 per day or part thereof up to a maximum of \$8.49 per week.”

- 5. By deleting the table in clause 21.1(j) and replacing it with the following:

“Allowance	Applicable Consumer Price Index
Meal allowance	Take away and fast foods sub-group
Clothing allowance	Clothing and footwear group
Equipment and tools allowance	Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group
Vehicle/travel allowance	Private motoring sub-group”

- 6. By deleting clause 21.1(h) and inserting the following:

“(h) Working away from usual place of work

This clause applies where an employer requires an employee other than a casual to work at a place more than 80 kilometres from the employee’s usual place of work. In these circumstances the employer must pay the employee an amount equal to the cost of fares reasonably spent by the employee in travelling from the employee’s usual place of work to the new place of work.”

- 7. By deleting clause 21.2(a) and inserting the following:

“(a) Fork-lift driver

- (i) In addition to the minimum hourly wage rate set out in clause 20.1, a fork-lift driver must be paid an additional allowance, per hour, equal to 1.5% of the standard hourly rate for all purposes.

- (ii) A part-time or casual fork-lift driver who was employed immediately prior to <insert date of the Determination> must, in addition to the minimum hourly wage rate set out in clause 20.1, be paid an additional allowance, per day, equal to 0.3% of the standard weekly rate, to a maximum of 1.5% of the standard weekly rate per week. A part-time or casual employee in receipt of the daily fork-lift driver allowance under this subclause may elect to receive the fork-lift driver allowance under subclause (i).”

8. By deleting clause 26.5 and inserting the following:

“26.5 Employees who are not paid by electronic transfer and whose rostered day off or accrued rostered day off falls on a pay day must be paid their wages, if they so desire, before going off duty on the working day prior to their day off.”

9. By inserting the following after clause 27.2 (c):

“(d) Despite the requirement to take time off within 28 days of accruing it in clause 27.2 (c), an employee and an employer may agree to extend the period for taking the accrued time off to within 6 months of its accrual subject to the following:

- (i) The agreement is recorded in writing and retained as an employee record;
- (ii) The accrued time off is taken at a time or times within the period of 6 months agreed by the employee and the employer;
- (iii) If the accrued time off is not taken within the period of 6 months, the employer must pay the employee for the accrued time off in the next pay period following those 6 months; and
- (iv) If, on the termination of the employee’s employment, accrued time off for working on a public holiday has not been taken, the employer must pay the employee for the accrued time off.”

10. By renumbering clauses 27.2 (d) and 27.2 (e), as 27.2 (e) and 27.2 (f) respectively.

11. By deleting clause 29.1(a) and inserting the following:

“29.1 Full-time employees

- (a) The average of 38 hours per week is to be worked in one of the following ways:

- a 19 day month, of eight hours per day;
- four days of eight hours and one day of six hours;
- four days of nine and a half hours per day;
- five days of seven hours and 36 minutes per day;
- 152 hours each four week period with a minimum of eight days off each four week period;
- 160 hours each four week period with a minimum of eight days off each four week period plus an accrued rostered day off;
- any combination of the above.”

12. By deleting clause 29.1(c) and inserting the following:

“(c) In addition to the conditions set out under clause 29.1(b), where the agreed hours of work arrangement provides for 160 hours per four week period with an accrued rostered day off, the arrangement will be subject to the following:

- (i) No employee is to work more than 10 days in a row without a rostered day off.
- (ii) Where practicable the accrued rostered day off must be contiguous with an employee’s rostered days off.
- (iii) Accrued rostered days off may be banked, up to a maximum of five days.
- (iv) An employee may elect, with the consent of the employer, to take an accrued rostered day off in part day amounts.
- (v) If an accrued rostered day off falls on a public holiday then, where practicable, the next day is to be taken as the accrued rostered day off.
- (vi) The entitlement to an accrued rostered day off at the employee’s ordinary hourly rate is subject to the following:
 - (A) each day of paid leave, except annual leave and long service leave, and any public holiday occurring during the four week cycle must be regarded as a day worked for accrual purposes; and
 - (B) an employee who has not worked a complete four week cycle in order to accrue an accrued rostered day off must be paid a pro rata amount for credits accrued for each day worked in the cycle. The pro rata amount is 24 minutes pay for each eight hour day worked.”

13. By deleting clause 30.2 and inserting the following:

“30.2 The roster will be alterable by mutual consent at any time or by amendment of the roster on seven days’ notice. Where practicable two weeks’ notice of rostered day or days off, or of accrued rostered day or days off should be given provided that the days off may be changed by mutual consent or through sickness or other cause over which the employer has no control.”

14. By inserting the following after clause 32.2 (b):

“(c) Despite the requirement to take time off within 28 days of accruing it in clause 32.2 (b), an employee and an employer may agree to extend the period for taking the accrued time off to within 6 months of its accrual subject to the following:

- (v) The agreement is recorded in writing and retained as an employee record;
- (vi) The accrued time off is taken at a time or times within the period of 6 months agreed by the employee and the employer;
- (vii) If the accrued time off is not taken within the period of 6 months, the employer must pay the employee for the accrued time off in the next pay period following those 6 months; and

- (viii) If, on the termination of the employee's employment, accrued time off for working on a public holiday has not been taken, the employer must pay the employee for the accrued time off."

15. By renumbering clause 32.2 (c) as 32.2 (d).

16. By deleting clause 33.3(b) and inserting the following:

"When a full-time or part-time employee works overtime on a rostered day off or an accrued rostered day off the following apply:

- (i) Subject to clause 33.3(b)(ii), the employee shall be paid 200% of their ordinary hourly rate for at least four hours even if they work less than four hours.
- (ii) The four hour minimum payment does not apply to work which is part of the normal roster which began the day before the rostered day off or accrued rostered day off or when overtime worked is continuous from the previous day's duty."

17. By deleting clause 37.1(b)(i) and inserting the following:

"A full-time employee whose rostered day off or accrued rostered day off falls on a public holiday must, subject to clause 32.2, either:

- Be paid an extra day's pay; or
- Be provided with an alternative day off within 28 days; or
- Receive an additional day's annual leave."

18. By deleting clause 39.1 and inserting the following:

"39.1 Right to make deductions

(a) When an employer provides an employee with accommodation, meals or both, then the employer may deduct an amount of money from the employee's wages in accordance with this clause.

(b) However, an employer must not make any deduction for the provision of accommodation, meals or both, if:

- (i) The employee is under 18 and the deduction has not been agreed to in writing by the parent or guardian of the employee; or
- (ii) The deduction is unreasonable in the circumstances"

19. By deleting clause 39.2 and inserting the following:

"39.2 Adult employees

The amounts set out in the table below may be deducted from the wages of an adult employee for the provision of accommodation, meals or both by their employer. The same amounts may be deducted from the wages of a junior employee in receipt of adult wages.

Service provided	Deduction \$ per week
Single room and 3 meals a day	209.35
Shared room and 3 meals a day	204.12
Single room only, no meals	198.88
Shared room only, no meals	193.65
A meal	8.37

20. By deleting clause 39.4 and inserting the following:

“39.4 Deductions for meals

An employer may deduct an amount from an employee’s wages for providing the employee with a meal only if:

- (a) the employee does not live in accommodation provided by the employer; and
- (b) the meal is provided during the employee’s normal working hours at the request of the employee.”

21. By inserting the following after clause 39.4:

“39.5 Calculation and Adjustment of Deductions

- (a) The amount that may deducted for the provision of accommodation, with or without meals, is calculated at 25% of the standard weekly rate for “Single room and 3 meals a day”. The following relativity is then applied:

Single room and 3 meals a day	100%
Shared room and 3 meals a day	97.5%
Single room only, no meals	95.0%
Shared room only, no meals	92.5%

- (b) The amount that may be deducted for the provision of a meal, is to be adjusted at the same time as any adjustment to the standard rate by reference to the percentage movement in the Australian Consumer Price Index Take away and fast foods sub-group since the amount was last adjusted.”

22. By deleting Schedule H.1(d), and inserting the following:

“Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00pm and midnight, but as a result of having a rostered day off or an accrued rostered day off provided in this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.”

This determination will come into operation from XX YYY 2018. In accordance with s.165(3) of the *Fair Work Act 2009* (Cth) these items do not take effect until the start of the first full pay period that starts on or after XXX XXXX 2018.

PRESIDENT