IN THE FAIR WORK COMMISSION

Matter No: AM2017/59

Four Yearly Review of Modern Awards –*Hospitality Industry (General) Award 2010*

SUBMISSION IN REPLY OF UNITED VOICE

1. This submission is made pursuant to the amended Directions of the Fair Work Commission dated 20 July 2018 and in reply to the submissions of the Australian Hotels Association (AHA) dated 24 July 2018.

Item 2 –Multi-Hire Arrangements

2. The AHA seeks to amend clause 11 of the *Hospitality Industry (General) Award 2010* ***(Hospitality Award)*** to allow multi-hire arrangements.
3. United Voice opposes the proposed variation.
4. The *Hospitality Award* is a modern award and must comply with the modern awards objective.
5. Section 138 of the *Fair Work Act 2009* ***(the Act)*** relevantly provides:

> *138 A modern award may include terms that it is permitted to include, and must include terms that it is* ***required to include, only to the extent necessary to achieve the modern awards objective*** *and (to the extent applicable) the minimum wages objective. (Emphasis added).*

6. The effect of s. 138 is that there is a category of terms within a modern award that must be included as *'necessary to achieve the modern awards objective'*.
7. Justice Tracey in *Shop, Distributive and Allied Employees Association v National Retail Association* (No. 2) [2012] FCA 480 noted (at para 46):

> *... a distinction must be drawn between what is necessary and that which is desirable. That which is necessary must be done. That which is desirable does not carry the same imperative for action.*

8. What is *'necessary'* in a particular case is a value judgment based on an assessment of the considerations in subsection 134(1), having regard to the submissions and the evidence directed to those considerations. What is necessary is also referrable to the specificity of the consideration within the modern awards objective. When, for example, a consideration demands that additional remuneration be provided for hours in addition to ordinary hours, the task of the Commission in conducting its review is directly informed by a clear direction of the Parliament, this distinguishes the paragraph 134(1)(da) consideration from broad social objectives that may be realised in a wide variety of ways.

9. When a variation cannot be justified in relation to a specific consideration within the modern awards objective but broadly is urged on the basis of business expediency, the Commission should treat the proposed variation with suspicion. If the problem is not one that properly raises concern about the modern awards objective and can be solved by enterprise bargaining then the Commission should be additionally cautious. A term in relation to multi hire is neither a required nor necessary term and as noted below conflicts with the modern awards objective and other statutory imperatives that inform which terms should be included in a modern award.

The new paragraph 134(1)(da) consideration

10. Section 134(1)(da) was inserted by the *Fair Work Amendment Act 2013* (Cth) with effect from 1 January 2014.
11. Section 134(1)(da) provides that the Commission is to take account of:

> *(da) the need to provide additional remuneration for:*
> *(i) employees working overtime; or*
> *(ii) employees working unsocial, irregular or unpredictable hours; or*
> *(iii) employees working on weekends or public holidays; or*
> *(iv) employees working shifts…*

12. The Explanatory Memorandum to the *Fair Work Amendment Bill 2013* stated, in respect of the addition of subsection 134(1)(da):

> *This amendment promotes the right to fair wages and in particular recognises the need to fairly compensate employees who work long, irregular, unsocial hours, or hours that could reasonably be expected to impact their work/life balance and enjoyment of life outside of work.*

13. Clearly, by operation of the insertion of s. 134(1) (da), Parliament intends that the assessment required by s. 134(1) of the Act to ensure that modern awards, together with the NES provide a fair and relevant minimum safety net of terms and conditions, must expressly consider the need to provide for additional remuneration for *'employees working overtime'* and *'unsocial, irregular or unpredictable hours'*.

Sections 62 and 147 of the Act

14. In *Four Yearly Review of Modern Awards–Preliminary Jurisdictional Issues* [2014] FWCFB 1788 it was clearly indicated that a range of matters in addition to the modern awards objective are relevant in a 4 yearly review and one relevant matter is the NES and the *Hospitality Award's* interaction with the NES.[1] Section 55 of the Act provides that a modern award must not exclude the NES or any provision of the NES and applies the now well established principle that modern awards can alter the NES provided that the treatment is more beneficial and can be characterised as not detrimental to the employee.
15. Subsection 62(1) of the Act states:

[1] *Four Yearly Review of Modern Awards–Preliminary Jurisdictional Issues* [2014] FWCFB 1788, at paragraph 10.

Maximum weekly hours

Maximum weekly hours of work

(1) An employer must not request or require an employee to work more than the following number of hours in a week unless the additional hours are reasonable:

(a) for a full-time employee--38 hours; or

(b) for an employee who is not a full-time employee--the lesser of:

(i) 38 hours; and

(ii) the employee's ordinary hours of work in a week.

Employee may refuse to work unreasonable additional hours

16. Section 62 is part of the NES and posits 38 hours as the maximum weekly hours.
17. Section 147 of the Act provides as follows:

Ordinary hours of work

A modern award must include terms specifying, or providing for the determination of, the ordinary hours of work for each classification of employee covered by the award and each type of employment permitted by the award.

18. Section 147 appears to be principally in aid of s. 62. The term *'ordinary hours'* is not generally defined in the Act although s.16 provides that:

(1) The base rate of pay of a national system employee is the rate of pay payable to the employee for his or her ordinary hours of work, but not including any of the following:

(a) incentive-based payments and bonuses;
(b) loadings;
(c) monetary allowances;
(d) overtime or penalty rates;
(e) any other separately identifiable amounts.

19. Ordinary hours cannot be greater than 38 in a week. One of the reasons that there is not a general definition of ordinary hours is that an employee's ordinary hours are generally determined by the hours of work that do not attract overtime and the instrument will usually determine when overtime applies. A multi-hire clause that diminishes an employee's entitlement to overtime is contrary to these NES provisions.

Alpine Resorts Award 2010

20. The *Alpine Resorts Award 2010* ***(Alpine Award)*** is a peculiar modern award. Coverage under the Alpine Award is limited to *employers throughout Australia who operate an alpine resort and their employees'*.[2] A recent application to extend the coverage of the Alpine Award was dismissed in *Alpine Resorts Award 2010* [2018] FWCFB 4984.[3]
21. The existence of a multi-hire clause in the *Alpine Award* has no relevance to the *Hospitality Award*. Alpine resorts are vastly different operations from hospitality businesses.
22. Further, the *Alpine Award* covers a limited number of employers and employees. NSW has 7 alpine resort areas[4], Victoria has 6 designated alpine resorts[5] and Tasmania has 2 resorts.[6]
23. In contrast, the *Hospitality Award* covers a broad range of employers and employees across Australia. There are over 830,000 workers employed in 82,000 businesses in the hospitality industry across Australia.[7]
24. A modern award with broad coverage should not be varied to introduce a clause which would result in detriment to a significant number of employees.
25. A multi-hire clause is neither appropriate nor necessary in the *Hospitality Award*.

Flexibility within the *Hospitality Award*

26. The *Hospitality Award* already contains a range of provisions that provide flexibility for employers:

    - Ordinary hours of work can be worked any day of the week, and across all hours of the day (clause 29).
    - There are 6 options within the award for averaging out the hours of full time employees (clause 29.1).
    - Employer flexibility in relation to rostering part-time employees was increased as a result of *4 yearly review of modern awards – Casual employment and Part-time employment* [2017] FWCFB 3541.
    - There are few restrictions on casual employment, and no requirement that it is restricted for temporary or relief purposes. A casual employee is simply *'an employee engaged as such'* (clause 13).
    - The Award flexibility clause enables an employer and an individual employee to vary the application of award terms including arrangements for when work is performed and overtime rates in order to meet the genuine individual needs of the employer and the individual employee (clause 7).

---

[2] Clause 4.1, *Alpine Award.*

[3] *Alpine Resorts Award 2010* [2018] FWCFB 4984.

[4] NSW Government, Department of Planning & Environment, 'Planning for NSW Alpine Resorts' accessed at https://www.planning.nsw.gov.au/policy-and-legislation/alpine-resorts

[5] Victoria State Government, Department of Planning, 'Alpine Resorts planning information' accessed at https://www.planning.vic.gov.au/permits-and-applications/specific-permit-topics/alpine-resorts-planning-information

[6] Skiresort.info, 'Ski resorts Tasmania' accessed at https://www.skiresort.info/ski-resorts/tasmania/

[7] Fair Work Ombudsman, Food Precincts Activity Report, July 2018, page 3. Note this figure includes employees covered by the *Restaurant Industry Award 2010* and the *Fast Food Industry Award 2010* as well, accessed at https://www.fairwork.gov.au/reports/food-precincts-activities-report/download-pdf

27. The current provisions provide an adequate level of flexibility for employers, and a multi-hire clause is not necessary to achieve flexibility within the *Hospitality Award*.
28. Multi-hire is not an appropriate term in a safety net instrument.
29. The variation sought by the AHA should be rejected.

Item 3 –Junior employee

30. United Voice does not oppose the insertion of a definition of junior employee in clause 3 in the terms proposed in paragraph [73] of the AHA submission.

Item 3 and 23 –Accrued rostered day off

31. United Voice does not oppose including a definition of accrued rostered day off in the terms proposed in paragraph [88] of the AHA submission.

Item 7 –Competency Based Wage Progression

32. United Voice does not oppose the *Hospitality Award* making provision for competency based wage progression for states in which competency based apprenticeships are in place.

Item 18A –Fork lift driver allowance

33. Clause 21.2(a) of the *Hospitality Award* states:

> *'In addition to the wage rates set out in clause 20.1, a fork-lift driver must be paid an additional allowance, per week, equal to 1.5% of the standard weekly rate for <u>all purposes</u>. A part-time or casual fork-lift driver must 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.' (Emphasis added).*

34. The fork lift driver allowance in clause 21.2(a) is an all purposes allowance. The *4 yearly review of modern awards* [2015] FWCFB 4658 ***(July Decision)*** and *4 yearly review of modern awards* [2015] FWCFB 6656 ***(September Decision)*** decisions of the Commission provided clarity in regards to the payment of all-purpose allowances. We recognise that as a result of these decisions there is utility in expressing the allowance as an hourly rate and in removing the restriction that the allowance can only be paid up to a maximum per week for casual employees.
35. However, such a variation could result in the reduction in the allowance paid to part-time employees. Under the current terms of the *Hospitality Award*, a part-time employee who works 3 hours on one day would receive the allowance at the daily rate (currently $2.51 per day). If the allowance were to be expressed as an hourly rate, that same employee would only receive a total allowance of $0.99 for that same shift. If the Commission determines to make the variation, provision should be made to ensure that no employees who are currently receiving the allowance at a daily rate are worse off.

Item 19 –Payment of Wages

36. The AHA seeks to vary clause 26 as to allow employers to average out an employee's wages over the roster cycle.
37. United Voice opposes the proposed variation.
38. Payment of wages matters are being addressed generally within AM2016/8 - Payment of Wages. The variation sought is inconsistent with the provisional model payment of wages term handed down in *4 yearly review of modern awards - Payment of Wages* [2016] FWCFB 8463[8], which requires that the employer must pay each employee no later than 7 days after the end of each pay period the employee's wages for the pay period.
39. The variation proposed would, in some circumstances, delay the payment due to the employee for a period beyond 7 days.
40. Further, in the award specific review, it is essential that consideration is given to matters specific to the *Hospitality Award*.
41. The variation sought is inconsistent with s134 (1) (a). Employees covered by the *Hospitality Award* are generally low paid, and it is not uncommon, or controversial, that many low paid employees live *'week to week'*. Any delay in receiving wages can result financial distress for low paid employees. As such, the variation sought does not meet the needs of the low paid.
42. An averaging of wages clause is likely to result in an increase in non-compliance with the *Hospitality Award*.
43. Hospitality is an industry in which there are already significant compliance issues. A July 2018 Report by the Fair Work Ombudsman ***(FWO)*** found that 72% of businesses audited in the industry were non-compliant.[9] This is an astonishing level of non-compliance with minimum award standards.
44. Hospitality is an industry in which it is common for employees to work fluctuating hours of work, and commonly includes periods of work in the evening and across weekends. These are hours of work that attract (differing) penalty rates. An averaging out mechanism would create complexity for both employers and employees. Employers must comply with the award in ensuring that each hour worked is paid at the correct penalty rate, and an averaging out provision is likely to create additional complexity in ensuring this occurs. It will also create additional complexity for employees trying to assess if they have been paid the correct rate of pay for their hours of work.
45. In paragraph [156] of the AHA submission, it is stated that overtime is only accrued in the final week of the roster cycle. Overtime *also* accrues on a daily basis, i.e. a full time employee cannot work more than 11.5 ordinary hours in one day (clause 29.1(b)(i)). Introducing an averaging out provision is likely to result in complexity and increased non-compliance in the payment of overtime.
46. In this respect, the variation sought by the AHA is inconsistent with s134 (1)(da) in that the practical effect of such a variation is likely to result in increased non-

[8] [2016] FWCFB 8463.

[9] Fair Work Ombudsman, Food Precincts Activity Report, July 2018, page 3.

compliance with the *Hospitality Award*, and is likely to result in a reduction of remuneration for employees working overtime, unsocial hours, on weekends and on shifts.

47. The variation sought by the AHA should be rejected.

Items 20 and 28 –Time off accrued for time worked on a Public Holiday

48. The AHA seeks to vary clause 27.2(c) and clause 32.2(b) to increase the period of time in which time off accrued for work on a public holiday must be taken.
49. United Voice opposes the variation sought.
50. Clauses 27.2(c) and 32.2(b) currently state that time off for working on a public holiday is to be taken off within 28 days of the employee accruing it.
51. The time period of 28 days is a sufficient period of time for that time off to be taken. It ensures that the employees receive the benefit of having worked that public holiday within a reasonable period of time.
52. The AHA has not demonstrated why it is necessary to increase that time period.
53. The variation sought by the AHA should be rejected.

Item 21 –Averaging Hours of Work

54. The AHA has sought to vary clause 29.1(a) by introducing two new methods by which hours of work can be averaged.
55. United Voice opposes this variation.
56. The first variation sought is for the average of 38 hours per week to be worked as *'76 hours over a two week period'*. The *Hospitality Award* already provides 6 different ways in which hours of work can be averaged out. There are already sufficient options available for an employer to enable them to roster appropriately for the business.
57. This proposed variation is unnecessary.
58. The second variation sought is for the average of 38 hours per week to be worked by *'averaging the hours worked over a 26 week period'*.
59. United Voice also opposes this variation.

<u>Section 64 of the Act</u>

60. The variation sought is inconsistent with the modern awards objectives. Contrary to the submissions of the AHA, it is not permitted by section 64 of the Act as this section is not relevant.
61. Section 64 of the Act provides the averaging of hours over a specified period of not more than 26 weeks for *award free employees*. Section 64 does not apply to employees covered by the *Hospitality Award*. Section 64 forms part of the NES and is intended to provide a minimum level of protection for employees who do not have the benefit of minimum standards under an award or enterprise agreement.
62. The *Hospitality Award* currently provides a greater level of protection for employees than section 64 of the Act and no valid reasons have been put as to why the level of protection under the award should be reduced to a minimum level provided under the NES for award free employees.

Section 63 of the Act

63. Section 63(2) of the Act does permit a modern award to provide for average weekly hours but only '*if the excess hours are reasonable for the purposes of subsection 62(1)*'.
64. Section 62(3) states the various matters that must be taken into account when determining whether additional hours are reasonable for the purposes for s 62(1) and (2). Relevantly, s 62(3)(d) requires that *'whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours'* be taken into account. The proposed variation by the AHA would remove the overtime payments employees would currently receive for the additional hours, and is unreasonable when considered in light of s 62(3) of the Act.

The modern awards objective

65. Further, the variation sought is inconsistent with the modern awards objectives in several respects.
66. The variation sought, if successful, would result in employees under the *Hospitality Award* working significant hours in excess of 38 hours per week without the overtime payments that they would currently be entitled to.
67. It is uncontroversial that a significant number of employees covered by the *Hospitality Award* are low paid. It was recognised in *4 yearly review of modern awards – Penalty Rates* [2017] FWCFB 1001 in respect of the *Hospitality Award* and certain others in paragraph [84] that *'a substantial proportion of award-reliant employees covered by these modern awards are low paid.*'[10]
68. Consideration must be given to s134 (1)(a) of the Act and the impact such a variation would have on employees covered under the *Hospitality Award* who are already low paid. These employees would face real and genuine wages losses, and experience an increase in financial distress.
69. Consideration must also be given to s 134(1) (da) (i) of the Act. There is already capacity under the *Hospitality Award* to roster employees in excess of their ordinary hours of work to meet substantially increased demand; it is simply that these hours must be paid as overtime. In this respect, the current *Hospitality Award* meets the modern award objectives. If the AHA variation was successful, employees working hours potentially far in excess of 38 hours per week would receive no additional remuneration for overtime and this would be inconsistent with the modern awards objective.
70. As put in paragraph [26] of this submission, the *Hospitality Award* already contains a range of provisions that provide flexibility for employers.
71. There are 6 options within the award for averaging out the hours of full time employees, including the ability to roster *'152 hours each four week period with a minimum of eight days off each four week period'* and *'160 hours each four week*

period with a minimum of eight days off each four week period plus a rostered day off' (clause 29.1).

72. The AHA has not made any adequate submissions as to why the current four week averaging out provision is not sufficient.
73. We note a similar claim was rejected in *4 yearly review of modern awards – Legal Services Award 2010* [2018] FWCFB 4709. The Full Bench in this case stated at paragraph [19]-[20]:

    [19] Those who propose a change to a modern award term bear the evidentiary onus of establishing that it is necessary to achieve the modern awards objective. At the hearing, the Law Firms advised that 26 weeks was 'the specified period' over which they sought to average hours of work. We indicated we would require evidence directed to the issues whether the current Award provision allowing for the averaging of ordinary hours over a 28-day period was not sufficient and whether the 26 week period was necessary.
    [20] No probative evidence was adduced by the Law Firms directed to the issues. We are therefore not persuaded that the proposed amendment to averaging of hours of work is necessary to achieve the modern awards objective. Consequently, the amendment sought is refused.

74. Similarly, the AHA has not adduced probative evidence to support the variation sought. That some employers may find it more cost-effective, and would prefer not to pay overtime rates, is not sufficient justification for a variation that would have a significant and detrimental impact on a workforce that is substantially low paid.
75. The variation sought by the AHA should be rejected.

Item 27 – Minimum Payment on Public Holidays

76. The AHA seeks to insert new wording into clause 32.2(a) of the *Hospitality Award* that would reduce the minimum engagement period for employees on public holidays.
77. Clause 32.2(a) of the *Hospitality Award* states:

    'An employee other than a casual working on a public holiday will be paid for a minimum of four hours' work. A casual employee working on a public holiday will be paid for a minimum of two hours' work.'

78. Clause 32.2(a) provides a benefit for employees in ensuring that an employee will receive adequate hours of payment for the disutility of working on a public holiday.
79. The variation proposed by the AHA reduces the actual minimum engagement period for employees on public holidays, and would have the effect of weakening the benefit that clause 32.2(a) currently provides for employees working on public holidays. This is inconsistent with s134 (1) (da) (iii) of the modern awards objectives.
80. The variation sought by the AHA should be rejected.

Item 34 – Public Holidays falling on Rostered Days Off

81. The AHA seeks to remove clause 37.1(b) from the *Hospitality Award*.
82. United Voice opposes this claim.
83. The Clubs Australia Industrial (CAI) application to remove this clause in the Public Holidays Common Issue was made only in respect of the *Registered and Licensed Clubs Award 2010* ***(Clubs Award)***.
84. The CAI application was heard by the Full Bench on 24 and 25 July 2017. The Full Bench acknowledged that there were separate proceedings in AM2017/39 in regards to the revocation of the Clubs Award, and stated in paragraphs 147 -148 of the transcript dated 24 July 2017[11]:

    PN147
    In those circumstances, we consider that the Bench which is hearing that matter should fully hear and determine that matter, including, if it arises, the circumstance in which that coverage should be subsumed into the Hospitality Award. So, we would not issue a decision in relation to the claim at least until the outcome of those proceedings is known and if the Registered Clubs Award is to be abolished, we would not issue a decision in relation to the claim at all.
    PN148
    The only circumstances in which we consider it appropriate to issue a decision in relation to the claim would be if the Clubs Award was ultimately not subsumed into the Hospitality Award but survived as an independent award, that is that United Voice was successful in its position.

85. A decision in respect of clause 37.1(b) of the *Clubs Award* will only be made if United Voice is successful in opposing the application of CAI in AM2017/39 and the *Clubs Award* is not revoked. In those circumstances, any such change, if successful, will apply to the *Clubs Award*.
86. Section 156 of the Act requires that each award must be reviewed in its own right. A decision in respect of the *Clubs Award* in the Public Holidays Common Issue cannot automatically be reproduced in the *Hospitality Award* without any consideration of how the clause operates within this modern award.
87. The AHA has not, in their submission, provided any submissions or evidence as to the effect of clause 37.1(b) within the *Hospitality Award*.
88. The variation sought by the AHA should be rejected.

Item 36A Deductions for the Provision of Meals

89. The AHA seeks to vary clause 39 of the *Hospitality Award* to enable an employer to deduct the amount of $8.37 per meal instead of per week.
90. It is alleged by the AHA that the current entitlement was a result of a drafting error during award modernisation.

[11] Transcript of proceedings, AM2014/301 Four yearly review of modern awards: Public Holidays Common Issue, 24 July 2017.

91. Whilst conditions under pre-modern awards may have some relevance, modern awards are not merely a reflection of pre-modern awards. The relevance of 2004 proceedings on the *Hospitality Industry –Accommodation, Hotels, Resorts and Gaming Award 1998* to a modern award in 2018 is questionable.
92. Modern awards are safety net instruments that must meet the modern awards objective in s 134 and *'provide a fair and relevant minimum safety net of terms and conditions.*'
93. Increasing the meal deduction from a weekly basis to a per meal amount would have a significant financial impact on employees. As stated in paragraph [67] of this submission, a substantial number of employees under the *Hospitality Award* are low paid and consideration must be given to s134(1)(a) of the modern objectives. For employees earning $19.47 per hour (Level 1), a per meal deduction of $8.37 will cause financial difficulty.
94. The deduction proposed by the AHA is not equivalent and excessive when considered against the cost of providing a meal to an employee within a hospitality enterprise.
95. Further, increasing the meal deduction to a per meal amount would result in inconsistencies across the relativities in clause 39.2 of the *Hospitality Award*. When a single room and 3 meals a day are provided, the deduction permitted is $209.35 per week. When a single room and no meals are provided, the deduction permitted is $198.88 per week. The difference in the two amounts is $10.47, and that is for the provision of 21 meals. Similarly, when a shared room and 3 meals a day are provided the deduction permitted is $204.12 per week. When a shared room and no meals are provided the deduction permitted is $193.65 per week. The difference in the two amounts is again $10.47. To increase the deduction for meals from a per week amount to a per meal amount would result in the cost per meal being excessive when compared with the other permitted deductions.
96. The variation sought by the AHA should be rejected.

Item 38 –Classification Definitions

97. The AHA seeks to vary the classification definition for Food and Beverage Attendant Grade 2 in Schedule D.2.1 to insert the words *"taking reservations, greeting and seating guests"* as a new duty.
98. United Voice opposes this variation.
99. We disagree with the characterisation of this proposed change as immaterial.
100. The proposed variation, if made, will lead to employees who are currently classified as Food and Beverage Attendant Grade 3 being demoted to Grade 2, with the associated loss of wages.
101. Taking reservations, greeting and seating guests is properly recognised in the *Hospitality Award* as a higher level duty which requires a greater level of skill than tasks such as general waiting duties, attending a snack bar and delivery duties.
102. In *Restaurant and Catering Association of Victoria* [2014] FWCFB 1996, evidence was adduced about the work performed by Food and Beverage Attendants under the *Restaurant Industry Award 2010* ***(Restaurants Award)***. The decision was made on the

evidence before the Commission and specifically in relation to the *Restaurants Award*.

103. Section 156 of the Act requires that each award must be reviewed in its own right and the AHA has not placed probative evidence before the Commission regarding the work of Food and Beverage Attendants under the *Hospitality Award* that justifies the variation sought.
104. The variation sought by the AHA should be rejected.

Item 39 –Clerical grade 3

105. The AHA seeks to vary the classification definition for Clerical Grade 3 employees.
106. United Voice opposes the variation sought.
107. The AHA states in paragraph [256] that the proposed variation does not change the structure or the scope of the classification.
108. We disagree. The proposed variation introduces several requirements that the Clerical Grade 3 perform at an *'advanced'* level, including:
    - *'Clerical duties of an advanced nature.'*
    - *'Advanced use of office equipment including a personal computer, devices attached to a personal computer, photocopiers and any other like equipment;'*
    - *'Advanced use of one or more computer software packages, whether general or specific to the employer;*
    - *'Use of advanced keyboard functions.'*
109. There is no requirement in the current *Hospitality Award* classification in D.2.4 that a Clerical grade 3 employee perform any *'advanced'* functions.
110. The introduction of such a concept is not neutral. *'Advanced'* performance of duties requires a higher level of skill than what is currently required for a Clerical grade 3 employee. If the proposed variation is given effect, it will result in more employees being classified at the grade 2, and create additional barriers for employees to classification as a grade 3.
111. The variation proposed by the AHA is a significant and substantive change. The introduction of advanced duties changes the structure and scope of the classification. The AHA have not provided any evidence relating to the current duties of Clerical grade 3 employees and why these duties should be amended in the manner they have proposed.
112. The variation sought by the AHA should be rejected.

AHA's New proposed variations

Apprentices –other than cooking and waiting trades

113. United Voice does not oppose the *Hospitality Award* making provision for apprentices in trades within the coverage terms of the award.

Consistency of Term usage

114. The matter raised by the AHA regarding appropriate terminology has already been addressed to a large extent in AM2016/15 Plain language re-drafting and should be finalised within that matter. A determination in respect of the two outstanding matters may depend on the Commission's decision regarding *Item 3 and 23 –Accrued rostered day off.*
115. United Voice does not oppose consistency of term usage regarding days off, provided that there is no loss of entitlement for employees who accrue rostered days off in accordance with clause 29.1(a).

United Voice
18 September 2018