



Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

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Work and Care:

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INTRODUCTION

The Fair Work Commission (**Commission**) has started a review of modern awards after receiving a request from the Minister for Employment and Workplace Relations. The Modern Awards Review 2023-24 (**Review**) will look at four priority topics:

- **Arts and Culture Sector** – this topic will look at which awards cover workers and the minimum standards in the arts and culture sector.
- **Job Security** – this topic will consider whether modern award provisions support the objective of promoting job security and the need to improve access to secure work across the economy.
- **Work and Care** – this topic will look at how award terms can impact workers with caring responsibilities.
- **Making the most commonly used awards easier to use** - this topic will invite interested parties to make proposals on how to do this, without reducing entitlements for workers.

The Australian Hotels Association (AHA) welcomes the opportunity to make a submission to the Commission, as part of the **work and care stream** of the Review.

The AHA confirms it can appear at the Commission's consultation hearings to discuss these proposals in further detail and to assist in providing further information, if needed. Should any specific proposals be raised by other parties during the consultation process, the AHA will consult more closely with those proposals.

THE AHA AND ITS MEMBERS

1. The Australian Hotels Association (**AHA**) is an organisation of employers in the hotel and hospitality industry registered under the *Fair Work (Registered Organisations) Act 2009*. Its diverse membership of more than 5,600 businesses includes pub-style hotels plus three, four and five-star international accommodation hotels. AHA members provide a wide range of services to the Australian public including accommodation, food, beverage, wagering, gaming, retail liquor, functions, events, live music, and entertainment.

2. The AHA's members are serviced by branches located in every Australian state and territory and a Canberra-based national office. As well as being members of their respective state or territory branch, accommodation hotels are represented by the National Accommodation Division. The AHA branches employ 15 lawyers and specialists providing advice to members on workplace relations, including advice on awards and the *Fair Work Act 2009 (the Act)*.
3. The Australian hotel industry is a 24/7 labour intensive service industry and is a key element of Australia's tourism industry. The makeup of the hotel workforce is extremely diverse and includes adults of all genders, ages and nationalities. The AHA member workforce comprises:
 - Over 300,000 workers.
 - 50% of members offer apprenticeships.
 - 60% of employees are female.
 - 65% of businesses are family owned with family members working in the business.
4. The hotel industry also draws on a diversity of skills including skilled, unskilled, and entry level workers. Occupations include:
 - Food, beverage, and retail staff
 - Chefs, cooks, and kitchenhands
 - Maintenance, security, cleaners, and room division
 - Managers, marketing, finance, and front office

Categories of employment percentages are:

- Casual - 55%
- Full time - 30%
- Part time - 12%
- Fixed term - 3%

Employee ages:

- 18 to 24 years - 36%
- 25 to 44 years - 39%
- 45 to 64 years – 24%
- 65 years plus -1%

5. The vast majority of the AHA's members operate under the *Hospitality Industry (General) Award 2020 (HIGA)*. Coverage is also provided by the *Restaurant Industry Award 2020 (RIA)*, *General Retail Industry Award 2020 (GRIA)* and a small number of enterprise agreements.

Discussion Questions

6. In relation to **discussion questions one and nine**, the AHA reiterates the proposal we have put forward in both the job security and award usability streams of the Review (provided as **Annexure A** to these submissions).
7. As noted in the Discussion Paper,

As part of the 4 Yearly Review, the Full Bench in the Casual Employment and Part-time case observed that 'award provisions have not been constructed simply to allow any person to be employed on any number of hours below full-time hours.' Rather, part-time and casual work retains distinctive features that reflect its original purpose to provide flexibility for certain workers, notably those with caring or study commitments.
8. In the AHA's view, the flexible part-time provisions improve access to secure work, facilitate women's full economic participation in our workplace and promote the need to have flexible

modern work practices and efficient and productive performance of work for both employers and employees.¹

9. The AHA is also mindful the standardisation of part-time provisions in modern awards will ensure consistency in business practices, especially for businesses who operate across several awards.
10. Importantly, the flexible part-time provisions of the HIGA contain a number of key safeguards that are necessary to continue over into other modern awards. These include:
 - Minimum and maximum engagements per week.
 - Obligation to provide employees with reasonably predictable hours of work.
 - Setting of guaranteed hours to be provided and paid to the employee over the roster cycle.
 - Changes to an employee's guaranteed hours occurring only by written consent of the employee.
 - Rostering protections not to be rostered outside the employee's agreed availability.
 - Entitlement to payment of overtime in cases where an employee is required to work outside their availability.
 - Ability to work additional hours within the employee's advised availability, above their guaranteed hours, by the employee's agreement.
11. Flexible part-time provisions also provide an option for increased flexibility for part-time employees, compared to the rigid provisions currently contained in some awards (e.g. clause 10 of the GRIA). For employees who prefer the certainty of having the same hours, on the same days, week to week, the flexible part-time provisions do not displace those arrangements.
12. However, for employees who require more flexibility, including those with caring commitments or who are managing a medical condition, having a higher degree of flexibility can still occur with the employment security afforded by their permanent employment status. These provisions encourage the employer's ability to provide ad hoc flexibility to employees, which is particularly attractive for employees with caring responsibilities.
13. Ultimately it is up to the Commission which stream of this Review it is most appropriate to deal with the AHA's proposal to introduce flexible part-time provisions into other awards however the AHA submits that they are a useful resource for workers who successfully balance both work and care.
14. In relation to **discussion questions fourteen and fifteen**, the AHA does not believe that any variations are necessary to personal/carer's leave provisions in modern awards, or to the definition of immediate family. The AHA is mindful that these are NES provisions. It is not apparent to the AHA why these provisions would need to be varied in the context of this Review.

Thank you for the opportunity to have made this submission.



STEPHEN FERGUSON
AHA NATIONAL CEO

¹ As per the modern award objectives set out in section 134 of the *Fair Work Act 2009* (Cth).

Annexure A – Clause 10 of the *Hospitality Industry (General) Award 2020*

10. Part-time employees

10.1 Classifications

An employer may employ part-time employees in any classification defined in Schedule A—Classification Structure and Definitions.

10.2 Definition of part-time employee

A part-time employee is an employee who:

- (a) is engaged to work at least 8 and fewer than 38 ordinary hours per week (or, if the employer operates a roster, an average of at least 8 and fewer than 38 hours per week over the roster cycle); and
- (b) has reasonably predictable hours of work.

10.3 A part-time employee is entitled, on a proportionate basis, to the same pay and conditions as those of full-time employees who do the same kind of work.

10.4 Setting guaranteed hours and availability

At the time of engaging a part-time employee, the employer must agree in writing with the employee on all of the following:

- (a) the number of hours of work which is guaranteed to be provided and paid to the employee each week or, where the employer operates a roster, the number of hours of work which is guaranteed to be provided and paid to the employee over the roster cycle (**the guaranteed hours**); and
- (b) the days of the week on which, and the hours on those days during which, the employee is available to work the guaranteed hours (**the employee's availability**).

10.5 Any change to a part-time employee's guaranteed hours may only be made with the written consent of the employee.

10.6 Rostering

The employer may roster a part-time employee to work their guaranteed hours and any additional hours in accordance with clause 15.2—Part-time employees and clause 15.5—Rosters (Full-time and part-time employees).

10.7 However, a part-time employee:

- (a) must not be rostered to work any hours outside the employee's availability; and
- (b) must have 2 days off each week.

10.8 Increasing guaranteed hours to match regular work pattern

If a part-time employee has regularly worked a number of ordinary hours in excess of their guaranteed hours for at least 12 months, then they may request in writing that the employer agree to increase their guaranteed hours.

10.9 If the employer agrees to a request under clause 10.8, then the employer and the part-time employee must vary the agreement made under clause 10.4 to reflect the employee's new guaranteed hours. The variation must be recorded in writing before it occurs.

10.10 The employer may only refuse a request under clause 10.8 on reasonable business grounds. The employer must notify the part-time employee in writing of a refusal and the grounds for it.

10.11 Change in employee's circumstances that changes their availability

If there is a genuine and ongoing change in the part-time employee's personal circumstances, then they may alter the times they are available by giving 14 days' written notice of the alteration to the employer.

10.12 If the employer cannot reasonably accommodate the alteration to the part-time employee's availability under clause 10.11, then (regardless of clause 10.5):

- (a) the part-time employee's guaranteed hours agreed under clause 10.4 cease to apply; and
- (b) the employer and the part-time employee must agree a new set of guaranteed hours under clause 10.4.

10.13 Payment rates

- (a) An employer must pay a part-time employee for ordinary hours worked in accordance with clause 18—Minimum rates.
- (b) An employer must pay a part-time employee at the rates prescribed in clause 28.4—Overtime rate for all time worked in excess of:
 - (i) 38 hours per week or, if the employee works in accordance with a roster, an average of 38 hours per week over the roster cycle; or
 - (ii) the maximum daily hours limitations specified in clause 15.2—Part-time employees; or
 - (iii) the employee's rostered hours.

10.14 Pre 1 January 2018 agreed pattern of work

A part-time employee who, immediately before 1 January 2018, had a written agreement with their employer on a regular pattern of work, is entitled to continue to be rostered in accordance with that agreement but may enter into a new written agreement under clause 10.4.