AUSTRALIAN HOTELS ASSOCIATION

27 Murray Crescent, Griffith ACT 2603
PO Box 4286, Manuka ACT 2603

T 02 6273 4007
E aha@aha.org.au
W aha.org.au

19 February 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 Report issued by the Fair Work Commission ('Commission') on 13 February 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 60A; and
   (ii) Amendments resulting from the Part-time and Casual employment Full Bench determination.

(i) Item 60A – Forklift Allowance as an hourly rate

2. The Associations confirm that it presses this issue and submits, as suggested by the Commission at the Conference on 12 February 2018, that the matter be transferred to the substantive matters claim.

3. It is the Association's view that the existing provision is confusing for all employees and does not align with definitions that have been amended or inserted into the Plain Language Exposure Draft ('PLED') as part of the Plain Language Re-Drafting Common Issue.

4. This issue can be illustrated as follows for a full-time employee:

   a) To calculate the ordinary hourly rate for a full-time forklift driver, the first step is to locate the minimum hourly rate in clause 18. The second step is to add any all-purpose allowance (as defined in clause 2). The notation under that definition states that it is an allowance that "*forms part of the employee's ordinary hourly rate and must be added to the minimum hourly rate when calculating penalties or overtime*" (emphasis added).

b) The allowance in clause 26.3 is expressed as a weekly rate, with no guidance as to how that weekly rate is converted into an hourly rate, or how one would process the entitlement for a full-time employee who worked 38 hours plus an additional 4 hours of overtime in a pay period. In such circumstances, it would appear the full-time employee would receive an amount in excess of $12.14 per week.

c) The issue is exacerbated in relation to part-time employees, due to the allowance being expressed as a daily rate "*up to a maximum of $12.14*" (see clause 26.3(b)) and how the allowance is treated in relation to work performed on days and/or at times when penalty rates and or overtime applies. For example, if the ordinary hours of a part-time forklift driver fall on a Saturday, does the employee receive the all-purpose allowance as a daily rate, *or* as an amount per hour forming part of the ordinary hourly rate, prior to the penalty rate loading (see clauses 2 and 29.2(b))?

d) In relation to casual employees, the daily rate is set to a *maximum* of $12.14 per week – the daily rate multiplied by 5. What occurs if a casual forklift driver works 6 days in a particular week?

e) For these reasons, it is our view that this item be transferred to the substantive claims matter in order to seek clarity and ensure that the modern award is simple and easy to understand.

(ii) Amendments resulting from the Part-time and Casual employment Full Bench determination

5. The following submissions are in response to the submissions filed by Australian Business Industrial and the NSW Business Chamber, Business SA and United Voice. In responding to these parties, and for convenience, we have referred to the clause number in the PLED published on 22 January 2018.

Australian Business Industrial and the NSW Business Chamber

6. We provide the following responses to the submissions of Australian Business Industrial and the NSW Business Chamber:

(a)	**Clause 10.2:**	We agree with the proposed amended put forward by Business SA; "*A part-time employee is an employee who:"*.
(b)	**Clauses 10.8/10.9:**	We agree.
(c)	**Clause 10.8:**	While we agree that the words "*before the variation occurs*" have been added, it does not, in our view, add any additional obligation on the parties. The parties to a part-time employment arrangement are required to agree on the guaranteed hours and the employee's availability (see clause 10.3). Any change to that arrangement, whether it occurs under clauses 10.4, 10.8 or 10.12, would in practice occur prior to the change being effective.

(d) **Clause 10.10:** We agree.

Business SA

7. We provide the following responses to the submissions of Business SA:

(a) **Clause 10.2:** As outlined in [6(a)] above, we agree with the proposed amendment.

(b) **Clause 10.3(a):** We agree.

(c) **Clause 10.5:** We disagree. The current clause is clear and unambiguous.

(d) **Clauses 10.8/10.9:** We agree.

(e) **Clause 10.14:** We disagree. Clause 10.14 should be maintained.

(f) **Clause 11.1:** We agree.

(g) **Clause 28.2(c):** We agree.

United Voice

8. We provide the following responses to the submissions of United Voice:

(a) **Clauses 10.8/10.9:** We agree.

(b) **Clause 28.1 (overtime rates):** The PLED reflects the current clause.

(c) **Clause 28.1 (reasonable):** The reference to the NES is adequate and appropriate.

(d) **Clause 28.2(c):** We agree.

9. 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.

Yours faithfully,

PHILLIP RYAN
NATIONAL DIRECTOR, LEGAL AND INDUSTRIAL AFFAIRS