



7 December 2018

The Associate to Justice Ross AO
Fair Work Commission
Level 4, 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 the Direction 1, we hereby **attach** an amended draft determination in which incorporates illustrative examples regarding Item 27.

During the hearing of the matter on 27 November, it was foreshadowed at *PN384-PN385*, that any further draft determinations may include other matters that were opposed. To that end, and in addition to Item 27, we have included in the amended draft determination proposed wording in relation to:

- (i) Item 21 – averaging 38 hours over a fortnight for full-time employees;
- (ii) Item 36A – the meal deduction being based on an amount per meal;
and
- (iii) Item 38 – reclassifying the duties of taking reservations, greeting and seating guests within the scope of a food and beverage attendant grade 2;

We note that some of the proposed variations in the attached amended draft determination and the draft consent determination filed jointly by the Australian Hotels Association and United Voice in accordance with the Directions, deal with the different variations to the same clauses. These matters relate to clauses 29.1 (a) and 39.2 of the *Hospitality Industry (General) Award 2010*.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'P. Ryan', with a long horizontal stroke extending to the right.

PHILLIP RYAN
National Director – Legal and Industrial Affairs

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. 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;
- 76 hours each two week period with a minimum of four days off each two week period;
- 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 a rostered day off;
- any combination of the above.”

2. By deleting clause 32.2 (a) and inserting the following:

“(a) 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. Hours of work performed on the day immediately before a public holiday, or immediately after a public holiday, and that form part of one continuous shift, are counted as part of the minimum hours worked for the purposes of this clause.

Illustrative Example 1 – Full Day Public Holiday

A full-time employee is rostered to work an 8 hour shift from 4:30pm on Thursday 25 January until 1:00am on Friday 26 January (Australia Day public holiday). The employee takes their half hour unpaid meal break at 8:30pm. Although the employee has only worked one hour on the public holiday, the employee’s overall shift length was at least 4 hours and therefore satisfies the minimum payment requirement.

¹ [Insert decision reference]

The full-time employee will receive payment of 7 hours at the ordinary hourly rate (plus late night penalties) and 1 hour at the public holiday rate.

Illustrative Example 2 – Part Day Public Holiday

A casual employee is rostered to work in a regional town on the same day as the town’s annual show day which falls on the first Friday of a month. The town celebrates the annual show with a part day public holiday which is observed from 12:00pm to 5:00pm. The casual employee works from 4:00pm until 7:00pm. Although the employee has only worked one hour on the part day public holiday, the casual employee’s overall shift length was at least 2 hours and therefore satisfies the minimum payment requirement.

The casual employee will receive payment of 1 hour at the casual public holiday rate, and 2 hours at the casual Monday to Friday hourly rate.”

3. By renumbering clause 32.2 (b) and 32.2 (c) as 32.2 (c) and 32.2 (d) respectively.
4. 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 \$ |
|-------------------------------|-------------------------|
| Single room and 3 meals a day | 209.35 per week |
| Shared room and 3 meals a day | 204.12 per week |
| Single room only, no meals | 198.88 per week |
| Shared room only, no meals | 193.65 per week |
| A meal | 8.37 per meal |

NOTE: The ‘Single room and 3 meals a day’ amount is calculated at 25% of the standard weekly rate. The following internal 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 |
| A meal | 1% of the <u>standard weekly rate</u> ” |

5. By deleting the definitions of food and beverage attendant grade 2 and food and beverage attendant grade 3 in clause D.2.1 of Schedule D and inserting the following:

“Food and beverage attendant grade 2 means an employee who has not achieved the appropriate level of training and who is engaged in any of the following:

- supplying, dispensing or mixing of liquor including the sale of liquor from the bottle department;
- assisting in the cellar or bottle department;
- undertaking general waiting duties of both food and/or beverage including cleaning of tables;
- receipt of monies;
- attending a snack bar;
- engaged on delivery duties; and
- taking reservations, greeting and seating guests.

Food and beverage attendant grade 3 means an employee who in addition to the tasks performed by a **Food and beverage attendant grade 2** is engaged in any of the following:

- the operation of a mechanical lifting device;
- attending a wagering (e.g. TAB) terminal, electronic gaming terminal or similar terminal;
- full control of a cellar or liquor store (including the receipt, delivery and recording of goods within such an area);
- mixing a range of sophisticated drinks;
- supervising food and beverage attendants of a lower grade; and
- training food and beverage attendants of a lower grade.”

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 XX XXXX 2018.

PRESIDENT