



27 November 2019

The Associate to Justice Ross AO  
Fair Work Commission  
Level 4, 11 Exhibition Street,  
MELBOURNE VIC 3000

By email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au); [chambers.ross.j@fwc.gov.au](mailto:chambers.ross.j@fwc.gov.au)

Dear Associate,

**RE: FOUR YEARLY REVIEW OF MODERN AWARDS: FINALISATION OF REIEW AND PLAIN LANGUAGE EXPOSURE DRAFT (AM2019/17, AM2016/15, AM2017/59 and AM2017/57)**

We refer to the above matter and hereby advise of the following matters in relation to the Hospitality Exposure Draft and the Restaurant Exposure Draft:

- (i) Attached to this correspondence is an application to vary the Hospitality Exposure Draft. The substance of the application was foreshadowed with the Fair Work Commission and other parties in proceedings in October 2019 and seeks to clarify the meal break entitlements in clause 16.2 of the Hospitality Exposure Draft;
- (ii) We note in the review of the *Registered and Licensed Clubs Award 2010*, a Report to the Full Bench (PR713492) has recognised uncertainty in the application of the late and early work penalty clauses and confirmed an amendment to remove such uncertainty. In our submission, and in order to ensure a simple, easy to understand, and stable modern award system, the same interpretation should apply to the corresponding clauses in the Restaurant Exposure Draft and Hospitality Exposure Draft (see s.134 (1) (g) of the *Fair Work Act 2009*).

Yours faithfully,

**PHILLIP RYAN**  
National Director – Legal and Industrial Affairs

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## Form F46 – Application to vary a modern award

Fair Work Act 2009, ss.157–160

This is an application to the Fair Work Commission to make a modern award or make a determination varying or revoking a modern award, in accordance with Part 2-3 of the [Fair Work Act 2009](#).

### The Applicant



These are the details of the person who is making the application.

Title	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Phillip		
Surname	Ryan		
Postal address	27 Murray Crescent		
Suburb	Griffith		
State or territory	Australian Capital Territory	Postcode	2603
Phone number	0418 602 989	Fax number	
Email address	<a href="mailto:legal@aha.org.au">legal@aha.org.au</a>		

### If the Applicant is a company or organisation please also provide the following details

Legal name of business	Australian Hotels Association
Trading name of business	Australian Hotels Association
ABN/ACN	78 756 030 961
Contact person	Phillip Ryan

### Does the Applicant need an interpreter?



If the Applicant requires an interpreter (other than a friend or family member) in order to participate in conciliation, a conference or hearing, the Fair Work Commission will provide an interpreter at no cost.

Yes – Specify language

No

**Does the Applicant require any special assistance at the hearing or conference (e.g. a hearing loop)?**

Yes – Please specify the assistance required

No

**Does the Applicant have a representative?**



A representative is a person or organisation who is representing the applicant. This might be a lawyer or paid agent, a union or employer organisation, or a family member or friend. There is no requirement to have a representative.

Yes – Provide representative's details below

No

**Applicant's representative**



These are the details of the person or organisation who is representing the Applicant (if any).

Name of person			
Firm, organisation or company			
Postal address			
Suburb			
State or territory			
Phone number		Fax number	
Email address			

**Is the Applicant's representative a lawyer or paid agent?**

Yes

No

## 1. Coverage

### 1.1 What is the name of the modern award to which the application relates?



Include the Award ID/ Code No. of the modern award

- Hospitality Industry (General Award) 2010
- MA000009

### 1.2 What industry is the employer in?

Hospitality

## 2. Application

### 2.1 What are you seeking?

Specify which of the following you would like the Commission to make:

- a determination varying a modern award
- a modern award
- a determination revoking a modern award

## 2.2 What are the details of your application?

1. This application seeks a variation to clause 16 of the *Plain Language Exposure Draft – Hospitality Industry (General) Award 20XX (Hospitality Exposure Draft)*, published on 14 October 2019 as part of the Fair work Commission’s 4 yearly review of modern awards (see s.156 of the *Fair Work Act 2009*).
2. Specifically, the Applicant seeks that the heading of column 1 in Table 2 in clause 16.2 of the Hospitality Exposure Draft be omitted and the following insert in its place:

**“Column 1  
Ordinary hours worked per shift”**

3. The basis for the variation is to provide clarity and remove ambiguity as to the interaction between the break entitlements set out in clause 16.2 and the additional break entitlements set out in clause 16.7.

Attach additional pages, if necessary.

## 2.3 What are the grounds being relied on?

Using numbered paragraphs, specify the grounds on which you are seeking the proposed variations.



You must outline how the proposed variation etc is necessary in order to achieve the modern awards objective as well as any additional requirements set out in the FW Act.


1. Clause 16.2 of the Hospitality Exposure Draft provides for break entitlements on the basis of hours work, with the entitlement increasing for longer shift thresholds.
2. Clause 16.7 of the Hospitality Exposure Draft provides for additional break entitlements where more than 2 hours of overtime is worked after the completion of rostered hours.
3. It is unclear whether or not an employee is entitled to additional entitlements under both clauses in circumstances where more than 2 hours overtime lifts the employee’s overall hours worked above the next threshold.
4. The insertion of the word “*ordinary*” into the heading of column 1 in clause 16.2 will make it clear that those entitlements are triggered by the number of ordinary hours worked.
5. In our submission the proposed variation is necessary in order to achieve the modern awards objective. In this respect we rely on section 134 (1) (g) of the *Fair work Act 2009* and the need for modern awards to be simple and easy to understand.
6. We note that a similar amendment has been accepted by a Full Bench of the Fair Work Commission in relation to the Restaurant Industry Award 2010 (see *2019 FWCFB 7035*).

Attach additional pages, if necessary.

## Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	Phillip Ryan
Date	26 November 2019
Capacity/Position	National Director – Legal & Industrial Affairs



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

**PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS**