

A summary of outstanding issues as itemised in the updated Revised Summary of Submissions – Hospitality Industry (General) Award 2017

This summary has been updated as a result of the conference held on 20 December 2017.

The outstanding items will be discussed at two conferences to be held in February 2018.

Second Conference (23 February 2018)

Item	Current Award Hospitality Industry (General) Award 2010	Plain Language Exposure Draft Hospitality Industry (General) Award 2017	Comments
12	<p>12. Part-time employment</p> <p>12.1 An employer may employ part-time employees in any classification in this award.</p> <p>12.2 A part-time employee is an employee who:</p> <ul style="list-style-type: none"> (a) works less than full-time hours of 38 per week; (b) has reasonably predictable hours of work; and (c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work. 	<p>10. Part-time employment</p> <p>10.1 An employee who is engaged to work for fewer than an average of 38 ordinary hours per week and whose hours of work are reasonably predictable is a part-time employee.</p> <p>10.2 An employer may employ part-time employees with any classification defined in Schedule A—Classification Structure and Definitions.</p> <p>10.3 This award applies to a part-time employee in the same way that it applies to a full-time employee except as otherwise expressly provided by this award.</p> <p>10.4 A part-time employee is entitled to payments in respect of annual leave and personal/carer’s leave on a proportionate basis.</p>	<p>Business SA Sub-14/06/17 (Para 3.1): Draft clause 10.1 doesn’t fully reflect the wording in the current clause 12.2 as it doesn’t provide the indicia of a part-time employee.</p> <p>Current cl 12.2(c) states a part-time employee receives a pro rata equivalent of pay and conditions available to those of full-time employees who do the same kind of work. This indicium has not been reproduced.</p> <p>Drafting comment: Clauses 10.3 and 10.4 deal with this.</p> <p>(PN360-364 of 12/09/17 transcript)</p> <p>ABI & NSWBC Sub-21/11/17 (Page 1): confirms as outstanding</p>
PTC-1	<p>(New clause from 1 January 2018)</p> <p>12. Part-time employment</p>	<p>(New clause from 1 January 2018)</p> <p>10. Part-time employment</p>	<p>Clause 10 substituted by PR598473</p>

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	<p>12.1 An employer may employ part-time employees in any classification in this award.</p> <p>12.2 A part-time employee is an employee who is employed in a classification in Schedule D—Classification Definitions and who:</p> <p>(a) is engaged to work at least 8 and less than 38 ordinary hours per week or, where the employer operates a roster, an average of at least 8 and fewer than 38 hours per week over the roster cycle;</p> <p>(b) has reasonably predictable hours of work; and</p> <p>(c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.</p> <p>12.3 At the time of engagement the employer and the part-time employee will agree in writing upon:</p> <p>(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</p>	<p>10.1 An employer may employ part-time employees in any classification in this award<u>defined in</u> Schedule A—Classification Structure and Definitions.</p> <p>10.2 A part-time employee is an employee who is employed in a classification in Schedule D—Classification Definitions and who:</p> <p>(a) is engaged to work at least 8 and less <u>fewer</u> than 38 ordinary hours per week or, where if the employer operates a roster, an average of at least 8 and fewer than 38 hours per week over the roster cycle; <u>and</u></p> <p>(b) has reasonably predictable hours of work; and</p> <p>(c) receives <u>is entitled</u>, on a pro rata <u>proportionate</u> basis, to the same equivalent pay and conditions to as those of full-time employees who do the same kind of work.</p> <p>10.3 At the time of engagement <u>engaging a part-time employee</u>, the employer and the part-time employee will agree in writing upon <u>must agree in writing with the employee on all of the following:</u></p> <p>(a) the number of hours of work which is guaranteed to be provided and paid to</p>	

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	<p>roster cycle (the guaranteed hours); and</p> <p>(b) the days of the week, and the periods in each of those days, when the employee will available to work the guaranteed hours (the employee’s availability).</p> <p>12.4 Any change to the guaranteed hours may only occur with the written consent of the part-time employee.</p> <p>12.5 The employer may roster the working of the employee’s guaranteed hours and any additional hours in accordance with clause 29.2—Part-time employees and clause 30—Rostering, provided that:</p> <p>(a) the employee may not be rostered for work for any hours outside the employee’s availability; and</p> <p>(b) the employee must have two days off each week.</p> <p>12.6 Where a part-time employee has over a period of at least 12 months regularly worked a number of ordinary hours that is in excess of the guaranteed hours, the employee may request in writing that the employer agree to increase the guaranteed hours. If the employer agrees to the request, the new agreement concerning guaranteed hours will be</p>	<p>the employee each guaranteed to be provided each week or, where if 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</p> <p>(b) the days of the week on which, and the periods in each of those days during which, the employee is available to work the guaranteed hours (the employee’s availability), and the periods in each of those days, when the employee will available to work the guaranteed hours (the employee’s availability).</p> <p>10.4 Any change to the guaranteed hours may only occur <u>be made</u> with the written consent of the part-time employee.</p> <p>10.5 The employer may roster the <u>employee to work working of the employee’s the</u> 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), provided that:</p> <p>10.6 <u>However, the employee:</u></p> <p>(a) the employee may <u>must</u> not be rostered</p>	

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	<p>recorded in writing. The employer may refuse the request only upon reasonable business grounds, and such refusal must be provided to the employee in writing and specify the grounds for refusal.</p> <p>12.7 Where there has been a genuine and ongoing change in the employee’s personal circumstances, the employee may alter the days and hours of the employee’s availability on 14 days’ written notice to the employer. If the alteration to the employee’s availability cannot reasonably be accommodated by the employer within the guaranteed hours then, despite clause 12.4, those guaranteed hours will no longer apply and the employer and the employee will need to reach a new agreement in writing concerning guaranteed hours in accordance with clause 12.3(a).</p> <p>12.8 All time worked in excess of:</p> <p>(a) 38 hours per week or, where the employee works in accordance with a roster, an average of 38 hours per week over the roster cycle; or</p> <p>(b) the maximum hours limitations specified in clause 29.2; or</p> <p>(c) the employee’s rostered hours;</p>	<p>for to work for any hours outside the employee’s availability; and</p> <p>(b) the employee must have two <u>2</u> days off each week.</p> <p>10.7 Where a <u>A</u> part-time employee <u>who</u> has over a period of at least 12 months regularly worked a number of ordinary hours that is in excess of the guaranteed hours, the employee may request in writing that the employer agree to increase the guaranteed hours.</p> <p>10.8 If the employer agrees to the a request under clause 10.7, the employer and the employee must vary the new agreement under clause 10.3 concerning to reflect the new guaranteed hours. The variation must be recorded in writing before the variation occurs. will be recorded in writing.</p> <p>10.9 The employer may only refuse the a request under clause 10.7 on only upon reasonable business grounds. The employer must notify the employee in writing of a refusal and the grounds for it. and such refusal must be provided to the employee in writing and specify the grounds for refusal.</p> <p>10.10 Where there has been <u>If there is</u> a genuine and ongoing change in the employee’s personal circumstances, the employee may alter the days and hours of the</p>	

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	<p>will be overtime and paid for at the rates prescribed in clause 33.3—Overtime rates.</p> <p>12.9 An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 13.</p> <p>12.10 A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.</p> <p>12.11 A part-time employee who immediately prior to 1 January 2018 has a written agreement with their employer for a regular pattern of hours is entitled to continue to be rostered in accordance with that agreement, unless that agreement is replaced by a new written agreement made in accordance with clause 12.3.</p>	<p>employee's<u>their</u> availability on by giving 14 days' written notice <u>of the alteration</u> to the employer.</p> <p>10.11 Clause 10.13 <u>applies if</u> if the alteration to the employee's availability cannot reasonably be accommodated by the employer within the guaranteed hours.</p> <p>10.12 then, dDespite clause 10.412.4, those the guaranteed hours will no longer agreed under clause 10.3 <u>cease to</u> apply and the employer and must agree in writing with the employee <u>under clause 10.3 a new set of guaranteed hours will need to reach a new agreement in writing concerning guaranteed hours in accordance with clause 12.3(a).</u></p> <p>10.13 <u>An employer must pay an employee at the rates prescribed in Table 10—Overtime rates for all</u> All time worked in excess of:</p> <p>(a) 38 hours per week or, where if the employee works in accordance with a roster, an average of 38 hours per week over the roster cycle; or</p> <p>(b) the maximum <u>daily</u> hours limitations specified in clause 15.2—Part-time employees; or</p> <p>(c) the employee's rostered hours;.</p>	

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		<p>— will be overtime and paid for at the rates prescribed in clause 33.3— Overtime rates.</p> <p>10.14 An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be <u>must be engaged and</u> paid as a casual employee in accordance with clause 13.</p> <p>10.15—An employer must pay a part-time employee employed under the provisions of this clause must be paid for ordinary hours worked in accordance with clause 18—Minimum rates at the rate of 1/38th of the weekly rate prescribed for the class of work performed.</p> <p>10.16—A part-time employee who immediately prior to before 1 January 2018 has had a written agreement with their employer for on a regular pattern of hours work is entitled to continue to be rostered in accordance with that agreement, unless that agreement is replaced by but may enter into a new written agreement made in accordance with clause 10.3<u>12.3.</u></p>	
14 and 15	<p>13. Casual employment</p> <p>13.1 A casual employee is an employee engaged as such and must be paid a casual loading of 25% as provided for in this award. The casual loading is paid as</p>	<p>11. Casual employment</p> <p>11.1 An employee <u>is a casual employee if they are engaged as a casual employee.</u>who is not covered by clause 9— Full time employment or clause 10— Part time employment must be</p>	<p>Item 14 (AHA) and Item 15 (Business SA). Clause 11.1 updated for consistency with paragraph [85] of [2017] FWCFB 3541 – published 5 July 2017</p>

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	<p>compensation for annual leave, personal/carer's leave, notice of termination, redundancy benefits and the other entitlements of full-time or part-time employment.</p>	<p>engaged and paid as a casual employee.</p> <p>11.2 An employer must pay a casual employee for each ordinary hour worked a loading of 25% on top of the minimum hourly rate otherwise applicable under clause 18—Minimum rates.</p> <p>NOTE: The casual loading is payable instead of entitlements from which casuals are excluded by the terms of this award and the NES. See Part 2-2 of the Act.</p>	
17	<p>13. Casual employment</p> <p>13.1 A casual employee is an employee engaged as such and must be paid a casual loading of 25% as provided for in this award. The casual loading is paid as compensation for annual leave, personal/carer's leave, notice of termination, redundancy benefits and the other entitlements of full-time or part-time employment.</p>	<p>11. Casual employment</p> <p>11.1 An employee is a casual employee if they are engaged as a casual employee, who is not covered by clause 9—Full-time employment or clause 10—Part-time employment must be engaged and paid as a casual employee.</p> <p>11.2 An employer must pay a casual employee for each ordinary hour worked a loading of 25% on top of the minimum hourly rate otherwise applicable under clause 18—Minimum rates.</p> <p>NOTE: The casual loading is payable instead of entitlements from which casuals are excluded by the terms of this award and the NES. See Part 2-2 of the Act.</p>	<p>AHA Sub-13/06/17 (Para 13): Current casual employment clause 13.1 (instead of clause 11.1 and 11.2) should be retained because it provides clarification to the compensation of the 25% casual loading.</p> <p>The Note in draft clause 11.2 does not provide this clarity.</p> <p>UV Reply sub- 22/06/17 (Para 13): Agrees with AHA's submission – current clause 13.1 is preferable to draft clause 11.2.</p> <p>Drafting comment: The Note explains the reason for the loading. It is sufficient that the requirement to pay the loading be in a substantive provision.</p> <p>AHA Sub-05/09/17 (Paras 28-31): Submits that PLED Note has not been amended and continues to appear in same form as the ED dated 27 April. Presses submission that current award clause</p>

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			should be retained. AHA Sub-20/11/17 (Para 17): confirms as outstanding
19	<p>13. Casual employment</p> <p>...</p> <p>13.3 A casual employee must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.</p>	<p>11. Casual employment</p> <p>...</p> <p>11.4 An employer must pay a casual employee at the end of each engagement unless the employer and the employee have agreed that the pay period of the employee is either weekly or fortnightly.</p>	<p>AHA Sub-13/06/17 (Para 13): Submits that draft provision should be simplified to be “A casual employee must be paid at the termination of each engagement, or otherwise, in accordance with clause 23.”</p> <p>UV Reply sub- 22/06/17 (Para 14): Disagrees with AHA’s proposal to remove the reference to agreement from draft clause 11.4.</p> <p>Drafting comment: A Note could be inserted after the clause as follows: “NOTE: Under clause 23.1 the employer and an individual casual employee may agree to a weekly or fortnightly pay period.”</p> <p>(PN226-235 of 12/09/17 transcript)</p> <p>UV Sub-20/11/17 (Paras 4-6): confirms as outstanding</p> <p>See transcript 20/12/17 PNs 92-95 and PNs 178-181</p> <p>Drafter’s note resolves the matter from the AHA’s point of view; however, UV is opposed to the note.</p>
PTC-2	13. Casual employment	11. Casual employment	Clause 11.3 replaced by clauses 11.3 and 11.4 in

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	<p>13.2 A casual employee may be engaged to work:</p> <p>(a) for a maximum of 12 hours per day or per shift;</p> <p>(b) for a maximum of 38 hours per week or, where the casual employee works in accordance with a roster, an average of 38 hours per week over the roster cycle (which may not exceed 4 weeks).</p> <p>13.3 On each occasion a casual employee is required to attend work they are entitled to a minimum payment for two hours' work.</p>	<p>11.3 An employer must pay a casual employee for a minimum of 2 hours' work on each occasion on which the casual employee is rostered to attend work even if the employee works for a shorter time.</p> <p>11.3 A casual employee must be engaged to work:</p> <p>(a) for a maximum of 12 hours per day or per shift; <u>or</u></p> <p>(b) for a maximum of 38 hours per week or, <u>where-if</u> the casual employee works in accordance with a roster, an average of 38 hours per week over the roster cycle (which may not exceed 4 weeks).</p> <p>11.4 On each occasion a casual employee is required to attend work they are entitled to a minimum payment for two hours' work. The minimum daily engagement for a casual employee is 2 consecutive hours.</p>	<p>accordance with PR598473</p>
29	<p>29. Ordinary hours of work (Full-time and part-time employees)</p> <p>29.3 Catering in remote locations</p> <p>...</p> <p>(f) An employee will have no entitlement to payment for the non-working days.</p>	<p>15. Ordinary hours of work</p> <p>15.2</p> <p>15.3 Catering in remote locations</p> <p>...</p> <p>(i) An employee is not entitled to payment for non-working days other than rostered days off.</p>	<p>AHA Sub-13/06/17 (Para 22): Wording found in current clause 29.3(f) should be retained because the words "other than rostered days off" alter the intent and interpretation of the clause.</p> <p>Drafting comment: The additional words are intended to clarify that employee who has accrued an entitlement to a rostered day off is entitled to be paid for that day.</p> <p>AHA Sub-05/09/17 (Paras 36-37): restates its</p>

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			<p>earlier concern.</p> <p>AHA Sub-20/11/17 (Para 17): confirms as outstanding</p> <p>See transcript 20/12/17 PNs 202-203</p>
30	<p>29.3 Catering in remote locations</p> <p>(a) Notwithstanding clauses 29.1(a) to 29.1(d) catering employers servicing clients in remote locations, may schedule work over consecutively recurring cycles followed by consecutive non-working days. Such work cycles will only be altered or introduced by agreement between an employer and the majority of their employees.</p>	<p>15.2</p> <p>15.3 Catering in remote locations</p> <p>(a) Clause 15.2 applies to employers providing catering services to clients in remote locations and their employees.</p>	<p>Business SA Sub-14/06/17 (Para 5.2): Neither the Exposure Draft nor the Current Award has a definition of ‘remote location’ for the purpose of clause 15.2(a).</p> <p>Drafting comment: Request Business SA suggest a definition of “remote location”.</p> <p>Business SA Sub-05/09/17 (Para 5.2): Unable to propose definition at this stage. Undertaking research into history and context of provision. Unprepared to propose a definition without benefit of this research.</p> <p>(PN373-377 of 12/09/17 transcript)</p> <p>See [2017] FWCFB 5402 PNs [40]-[45]</p>
PTC-3	<p>Please note - The following extract is the PLED clause 10 as published on 25 October 2017:</p> <p>10. Part-time employment</p> <p>10.7 An agreement under clause 10.5 or any variation of it under clause 10.6 must satisfy each of the following conditions:</p> <p>(a) the minimum number of ordinary hours that may be worked on any day is 3</p>	<p>15.2 Part-time employees</p> <p>A part-time employee’s rostered hours of work under clause 10.5 must meet the following conditions:</p> <p>An agreement under clause 10.5, or any variation of</p>	<p>Clause 10.7 relocated to clause 15.2. Clause 15.2 amended by PR598473</p>

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	<p>(excluding meal breaks); and</p> <p>(b) the maximum number of ordinary hours that may be worked on any day is 11.5 (excluding meal breaks); and</p> <p>(c) an employee who is rostered to work more than 10 ordinary hours on more than 3 consecutive days is entitled to a break of at least 48 hours after the last consecutive day on which the employee works more than 10 ordinary hours; and</p> <p>(d) the maximum number of days on which an employee may work more than 10 ordinary hours in a 4 week cycle is 8; and</p> <p>(e) the maximum spread of hours for an employee who works split shifts is 12.</p>	<p>it under clause 10.6, must satisfy each of the following conditions:</p> <p>(a) the minimum number of ordinary hours that may be worked on any day is 3 (excluding meal breaks); and</p> <p>(b) the maximum number of ordinary hours that may be worked on any day is 11.5 (excluding meal breaks); and</p> <p>(c) an employee who is rostered to work more than 10 ordinary hours on more than 3 consecutive days is entitled to a break of at least 48 hours after the last consecutive day on which the employee works more than 10 ordinary hours; and</p> <p>(d) the maximum number of days on which an employee may work more than 10 ordinary hours in a 4 week cycle is 8; and</p> <p>(e) the maximum spread of hours for an employee who works split shifts is 12.</p>	
<p>33, 34 and 35</p>	<p>31. Breaks</p> <p>31.1 Breaks</p> <p>An employee (including a casual employee) who is required to work a shift of more than five hours and up to six hours may elect to take an unpaid meal break of up to 30 minutes during the shift</p>	<p>Please note - The following extract contains amendments proposed to resolve items 34 and 35:</p> <p>16. Breaks</p> <p>16.1 Clause 16 deals with meal breaks and rest breaks and gives an employee an entitlement to meal breaks and rest breaks them in specified circumstances.</p>	<p>Item 33:</p> <p>AHA Sub-05/09/17 (Paras 14-19, 38-41): In relation to clause 16.6, submits PLED drafting alters calculation of payment for an unpaid break not taken. Submits current award provides additional payment to an employee when an unpaid break has not been taken is based on ordinary hourly rate. Submits PLED provides</p>

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	<p>and the employer shall not unreasonably refuse the request.</p> <p>31.2 Longer shifts</p> <p>(a) If the employee is required to work a shift of more than six hours and up to eight hours, the employee is entitled to an unpaid meal break of no less than 30 minutes. The unpaid break may be taken no earlier than two hours after starting work and no later than six hours of starting work.</p> <p>(b) If the employee is required to work a shift of more than eight hours and up to 10 hours, the employee is entitled to an unpaid break of no less than 30 minutes and an additional 20 minute paid break (which may be taken as two 10 minute paid breaks).</p> <p>The unpaid break may be taken no earlier than 2 hours after starting work and no later than six hours after starting work. Breaks should be spread evenly across the shift.</p> <p>(c) If the employee is required to work a shift exceeding 10 hours, the employee is entitled to an unpaid break of no less than 30 minutes</p>	<p>16.2 An employee who works a shift of more than 5 hours and up to 6 hours may, no later than the start of the shift, request <i>[in writing]</i> to take an unpaid meal break during the shift of up to 30 minutes. The employer must not unreasonably refuse the request. The request applies to all such shifts worked by the employee unless otherwise agreed between the employee and the employer. An arrangement under clause 16.2 may be reviewed at any time.</p> <p>16.2 An employee who works the number of hours in any one shift specified in column 1 of Table 2—Entitlements to meal and rest break(s) is entitled to a break or breaks as specified in column 2.</p> <p>Table 2—Entitlements to meal and rest break(s)</p> <table border="1" data-bbox="902 938 1489 1396"> <thead> <tr> <th data-bbox="902 938 1137 1054">Column 1 Hours worked per shift</th> <th data-bbox="1137 938 1489 1054">Column 2 Breaks</th> </tr> </thead> <tbody> <tr> <td data-bbox="902 1054 1137 1177">More than 5 and up to 6</td> <td data-bbox="1137 1054 1489 1177">30 minute unpaid meal break * Item 34 amendment</td> </tr> <tr> <td data-bbox="902 1177 1137 1332">More than 5 and up to 6</td> <td data-bbox="1137 1177 1489 1332">Unpaid meal break of up to 30 minutes minute unpaid meal break * Item 35 amendment</td> </tr> <tr> <td data-bbox="902 1332 1137 1396">More than 6 and</td> <td data-bbox="1137 1332 1489 1396">30 minute unpaid meal break (to be taken after the</td> </tr> </tbody> </table>	Column 1 Hours worked per shift	Column 2 Breaks	More than 5 and up to 6	30 minute unpaid meal break * Item 34 amendment	More than 5 and up to 6	Unpaid meal break of up to 30 minutes minute unpaid meal break * Item 35 amendment	More than 6 and	30 minute unpaid meal break (to be taken after the	<p>payment is at 150% of ordinary hourly rate. Submits that this results in a higher payment to the detriment of employers.</p> <p>Notes clauses 16.4 and 16.5 have failed to reflect existing provisions. Restates its position that table 2 and clauses 16.4 and 16.5 should be amended.</p> <p>(PN208-213 of 12/09/17 transcript)</p> <p>See transcript 20/12/17 PNs 49-51</p> <p>Item 34:</p> <p>Business SA Sub-14/06/17 (Para 6): Current provisions should be retained because of the substantive changes in draft clause 16.</p> <p>DC: On reviewing the draft in the light of Business SA’s general comment, it is agreed that the draft gives an entitlement to an unpaid meal break where the shift is up to 6 hours whereas the current award, despite some language difficulties, would seem to only allow the employee to request a 30 minute unpaid meal break which the employer must not unreasonably refuse.</p> <p>This could be fixed by:</p> <ul style="list-style-type: none"> Amending cl. 16.1 so that it reads “Clause 16 deals with meal breaks and rest breaks and gives an employee an entitlement to them in specified circumstances.”
Column 1 Hours worked per shift	Column 2 Breaks										
More than 5 and up to 6	30 minute unpaid meal break * Item 34 amendment										
More than 5 and up to 6	Unpaid meal break of up to 30 minutes minute unpaid meal break * Item 35 amendment										
More than 6 and	30 minute unpaid meal break (to be taken after the										

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	<p>and two 20 minute paid breaks. The unpaid break may be taken no earlier than two hours after starting work and no later than 6 hours after starting work. Breaks should be spread evenly across the shift.</p> <p>31.3 Request for unpaid meal break</p> <p>(a) Where an employee elects to take an unpaid break, the request must be made in writing no later than at the commencement of a shift and the employer shall not unreasonably refuse the request.</p> <p>(b) The written request will apply to all shifts undertaken by the employee of more than five hours, unless otherwise agreed between the employee and employer. This arrangement may be reviewed at any time.</p> <p>31.4 Break not given</p> <p>For a shift of more than six hours, if the employer does not release an employee for an unpaid meal break the employee shall be paid at the rate of 50% of the ordinary hourly rate extra for each hour or part of an hour from six hours after the employee started work until the employer gives the employee the unpaid meal</p>	up to 8	first 2 hours of work and within the first 6 hours of work)	<ul style="list-style-type: none"> Inserting after cl. 16.1 a new cl. 16.2 as follows: “An employee who works a shift of more than 5 hours and up to 6 hours may, no later than the start of the shift, request to take an unpaid meal break during the shift of up to 30 minutes. The employer must not unreasonably refuse the request. The request applies to all such shifts worked by the employee unless otherwise agreed between the employee and the employer. An arrangement under clause 16.2 may be reviewed at any time.” In Table 2, the first entry should be deleted. <p>Delete existing cls. 16.4 and 16.5. (PN382-389 of 12/09/17 transcript)</p> <p>** Additionally, raised the request must be in writing no later than the commencement of the shift.</p> <p>See transcript 20/12/17 PNs 49-51</p> <p>Item 35: ABI&NSWBC Sub-09/06/17 (Paras 6.1-6.3): Qualifying words re breaks at current clauses 31.1 and 31.2 omitted; potentially changes the legal effect of the provision.</p> <p>The words “up to” be added after “unpaid meal</p>
More than 8 and up to 10	<p>30 minute unpaid meal break (to be taken after the first 2 hours of work and within the first 6 hours of work)</p> <p>One 20 minute paid rest break (may be taken as two 10 minute paid rest breaks)</p>			
More than 10	<p>30 minute unpaid meal break (to be taken after the first 2 hours of work and within the first 6 hours of work)</p> <p>Two 20 minute paid rest breaks</p>			
	<p>16.3 In rostering the additional paid rest breaks, the employer must make all reasonable efforts to ensure that breaks are spread evenly across the shift.</p> <p>16.4—An employee working a shift of more than 5 and up to 6 hours who elects to take an unpaid meal break must request the break in writing no later than the start of their shift. The employer must not unreasonably refuse the employee’s request.</p> <p>16.5—A request under clause 16.4 applies to all</p>			

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	<p>break, or until the shift ends.</p> <p>....</p>	<p>shifts of more than 5 hours worked by that employee unless otherwise agreed between the employee and the employer.</p>	<p>break of” in first row of column 2 and “at least” be added after “unpaid meal break of” in other rows.</p> <p>[Provides amendments in table for Full Bench’s information]. Para 6.2 of Sub-09/06/17.</p> <p>Also submits that the updated wording for Restaurants (item 14 of those submissions) should be inserted into the PLED. (Para 6.3 of Sub-09/06/17)</p> <p>Drafting comment: In response to Business SA’s comments (Item 34), it is suggested that “Unpaid meal break of up to 30 minutes” be substituted in column 2 in relation to a shift of more than 5 and up to 6 hours.</p> <p>However, where an employee is being given an entitlement, the words “at least” are not appropriate</p> <p>(PN336-343 of 12/09/17 transcript)</p> <p>ABI&NSWBC Sub-22/09/17: Accept drafter’s comments.</p> <p>Although ABI&NSW provided submissions, the item is not yet resolved as it overlaps with other items related to the same clause.</p> <p>See transcript 20/12/17 PNs 49-51</p> <p>ABI & NSWBC Sub-21/11/17 (Page 1): confirms as outstanding</p>

Item	Current Award Hospitality Industry (General) Award 2010	Plain Language Exposure Draft Hospitality Industry (General) Award 2017	Comments
62 and PTC-4	<p>33. Overtime</p> <p>33.1 Reasonable overtime</p> <p>(a) Subject to clause 33.1(b) an employer may require an employee other than a casual employee to work reasonable overtime at overtime rates.</p> <p>(b) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:</p> <ul style="list-style-type: none"> (i) any risk to the employee’s health and safety; (ii) the employee’s personal circumstances including any family responsibilities; (iii) the needs of the workplace or enterprise; (iv) the notice (if any) given by the employer of the overtime and by the employee of their intention to refuse it; and (v) any other relevant matter. 	<p>28. Overtime</p> <p>28.1 An employer may require a full-time or part-time<u>an</u> employee to work additional hours <u>at overtime rates</u>.</p> <p>NOTE: Under the NES (see section 62 of the Act) an employee may refuse to work additional hours if they are unreasonable. Section 62 sets out factors to be taken into account in determining whether the additional hours are reasonable or unreasonable.</p>	<p>Item 62 (Business SA):</p> <p>Clause 28.1 amended in accordance with determination (PR598473)</p> <p>Reasonable overtime has been referred to the plain language re-drafting Full Bench for further consideration (see [2017] FWCFB 6884).</p> <p>25/10/17: [2017] FWCFB 5402 PNs [24]-[29]</p> <p>United Voice Sub-20/11/17 (Paras 15-21): re new wording:</p> <p>Current cl 33.1 contains qualifier that overtime hours must be “reasonable”.</p> <p>Note in PLED 28.1 provides that employee may refuse to work additional hours if they are unreasonable. However, clause no longer contains an obligation on the employer to ensure that overtime hours are reasonable. Currently an employer can only require an employee to work <i>reasonable</i> overtime. An employee may refuse to work overtime where it is unreasonable.</p> <p>Under PLED 28.1 employer’s right has expanded as they are no longer required to give consideration to reasonableness. PLED 28.1 shifts responsibility solely onto employee to raise issue of whether or not hours are reasonable.</p> <p>Proposes following wording:</p> <p><i>An employer may require a full-time or part-time</i></p>

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			<i>employee to work <u>reasonable</u> additional hours.</i> See transcript 20/12/17 PNs 212-223
PTC-5	<p>33.2 Entitlement to overtime rates</p> <p>(a) A full-time employee is paid at overtime rates for any work done outside of the hours set out in clause 29—Ordinary hours of work.</p> <p>(b) A part-time employee is paid at overtime rates in the circumstances specified in clause 12.7.</p>	<p>28.2 Payment of overtime</p> <p>(a) An employer must pay a full-time employee at the overtime rate for any time worked in excess of their ordinary hours.</p> <p>(b) A part-time employee is paid <u>An employer must pay a part-time employee</u> at overtime rates in the circumstances specified in clause 10.13.</p> <p>An employer must pay a part-time employee at the overtime rate for any time worked in excess of the number of ordinary hours agreed under clause 10.5 <u>(Part time employment), as varied under clause 10.6.</u></p> <p>(c) A casual employee is paid <u>An employer must pay a casual employee</u> at overtime rates in the circumstances specified in clause 11.6.</p> <p>(d) An employer must pay an employee at the overtime rate for any time that the employee is required to work on a rostered day off.</p> <p>(e) When a full-time or part-time employee works overtime on a rostered day off the following apply: Subject to clause (ii), the employee shall <u>must</u> be paid 200% of their</p>	<p>Clause 28.2 amended by PR598473</p>

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		<p>ordinary hourly rate for at least for a minimum of 4-four hours even if they work for less than four hours.</p> <p>(f) —However, The four the 4 hour minimum payment does not apply to if the-work is part of a normal roster that began on the day before the rostered day off or is overtime that is continuous from the previous day’s duty. which is part of the normal roster which began the day before the rostered day off or when overtime worked is continuous from the previous day’s duty.</p> <p>The employee is entitled to be paid for a minimum of 4 hours’ work on a rostered day off even if the employee is only required to work for a shorter time. However, this entitlement does not apply if the work is part of, or continuous on, a normal roster that started the day before.</p>	
65	<i>No equivalent wording</i>	<p>28.4 Overtime rate</p> <p>The overtime rate mentioned in clause 28.2 is the relevant percentage specified in column 2 of Table 10—Overtime rates (depending on when the overtime was worked as specified in column 1) of the employee’s ordinary hourly rate base rate of pay.</p>	<p>Item 65 was provisionally resolved with the insertion of the new words.</p> <p>AHA Sub-20/11/17 (Paras 10-11): Submits that variation sought at this item was linked to their position regarding item 7 withdrawn [AHA Sub-20/11/17 (Para 9)] as it related to submission in HIGA award-specific matter (AM2014/272). Submits that Item 65 was linked to their submission that the “Ordinary Hourly Rate” definition as it currently exists in the HIGA would be retained and had relevance for the</p>

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			<p>purpose of overtime calculations.</p> <p>See transcript 12/09/17 PNs 353-356 and [2017] FWCFB 5402</p> <p>See transcript 20/12/17 PNs 58-61 and 176-178)</p> <p>Item 65 – revised definition includes all-purpose allowances.</p> <p>Submits alternative solution to item 65 – use the words “<i>relevant minimum hourly rate</i>” instead of “ordinary hourly rate” where it appears in PLED cl. 28.4</p>
110	<p>Please note - The following extract is the PLED clause 18.1 as published on 25 October 2017:</p> <p>18.1 An employer must pay an adult employee (other than an apprentice) the minimum hourly rate specified in column 3 (or for a full-time employee the minimum weekly rate specified in column 2) in accordance with the employee classification specified in column 1 of Table 3—Minimum rates.</p> <p>...</p>	<p>18.1 Adult rates</p> <p>An employer must pay an adult employee (other than an apprentice) the rate applicable to minimum hourly rate specified in column 3 (or for a full-time employee the minimum weekly rate specified in column 2) in accordance with the employee classification specified in column 1 of Table 3—Minimum rates for ordinary hours of work as follows:</p> <p>(a) for a full-time employee, the minimum weekly rate specified in column 2; or</p> <p>(b) for a part-time employee, the minimum hourly rate specified in column 3.</p> <p>...</p>	<p>New wording proposed for clauses 18.1 and 18.3 as a result of changes made to the Clerks PLED published on 1 December 2017.</p>

Item	Current Award Hospitality Industry (General) Award 2010	Plain Language Exposure Draft Hospitality Industry (General) Award 2017	Comments
	<p>18.3 Casino gaming classifications</p> <p>An employer must pay an adult employee (other than an apprentice) the minimum hourly rate specified in column 3 (or for a full-time employee the minimum weekly rate specified in column 2) in accordance with the employee classification specified in column 1 of Table 4—Casino gaming minimum rates as defined by the Casino Gaming Stream in Schedule A—Classification Structure and Definitions</p>	<p>18.3 Casino gaming classifications</p> <p>An employer must pay an adult employee (other than an apprentice) the <u>rate applicable to minimum hourly rate specified in column 3 (or for a full-time employee the minimum weekly rate specified in column 2) in accordance with</u> the employee classification specified in column 1 of Table 4—Casino gaming minimum rates as defined by the Casino Gaming Stream in Schedule A—Classification Structure and Definitions <u>for ordinary hours or work as follows:</u></p> <p><u>(a) for a full-time employee, the minimum weekly rate specified in column 2; or</u></p> <p><u>(b) for a part-time employee, the minimum hourly rate specified in column 3.</u></p>	
	<p>Please note - The following extract is the PLED Schedule B as published on 25 October 2017:</p> <p>Schedule B—Summary of Hourly Rates of Pay</p> <p>NOTE: Employers who meet their obligations under this schedule are meeting their obligations under the award.</p>	<p>Schedule B—Summary of Hourly Rates of Pay</p> <p>NOTE: Employers who <u>pay wages in accordance with this schedule satisfy meet</u> their obligations <u>under this schedule are meeting their obligations</u> under the award <u>to pay wages for hours worked.</u></p>	<p>New wording proposed for Note directly below Schedule B clause title (<u>Clerks Transcript - 15/9/17 - PN 825</u>)</p>
PTC-6	<p>Please note - The following extract is the PLED</p>		<p>Clause 34.4(d) amended by <u>PR598473</u></p>

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	<p><i>clause 34.4 as published on 25 October 2017:</i></p> <p>34.4 Public holiday arrangements for part-time employees</p> <p>(d) A part-time employee who works on that day is entitled to be paid in accordance with clause 29.</p>	<p>34.4 Public holiday arrangements for part-time employees</p> <p>(d) A part-time employee who works on that day is entitled to<u>must</u> be paid in accordance with clause 29.</p>	