

20 November 2018

The Associate to the Honourable Justice Ross AO
President
Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

By email: amod@fwc.gov.au

Dear Associate,

RE: 4 YEARLY REVIEW OF MODERN AWARDS—AM2014/272, AM2017/59

1. We refer to the above matter and the Fair Work Commission's (the "Commission") Directions at the Mention on 9 November 2018 regarding the *Hospitality Industry (General) Award 2010* ("**Hospitality Award**") Substantive Issues.
2. This correspondence is on behalf of the Australian Hotels Association ("AHA"), the Accommodation Association of Australia and the Motor Inn, Motel and Accommodation Association (the "Associations") and United Voice as parties to this matter.

Items that are not opposed

3. The following items are items raised by the Associations that United Voice indicated it did not oppose in its submissions in reply dated 18 September 2018:
 - a) Item 3 – Insertion of a definition of 'junior employee';
 - b) Item 7 – Insertion of competency based progression arrangements and pay scales for apprentices
 - c) Item 18A – The AHA, on behalf of the Associations, and United Voice have discussed the concern that United Voice raised in its reply submissions in relation to this issue, and have reached a consent position on the structure of the clause.
 - d) Item raised in the Association's submissions of 8 February and 24 July 2018 – Insertion of a new apprentice pay scale for those apprentices undertaking an apprenticeship and the trade qualified position is covered by the Hospitality Award.
 4. The following items are items raised by United Voice that the Associations indicated it did not oppose in its submissions in reply dated 18 September 2018:
 - a) Item 46 with respect to the variation so that the tool allowance at clause 21.1(b) is adjusted in line with the *Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group* from the next adjustment of the standard rate;
 - b) Item 47 – Extension of the application of the tool allowance to apprentice cooks at clause 21.1(b)(i).
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- c) Item 47A – Removal of clause 21.1(h).
5. Draft Determinations for the above Items are attached.

Items that are not agreed to

6. The following items are items that the Associations continue to press, and are opposed by United Voice:
- a) Item 2;
 - b) Item 3 and 23 – the Associations and United Voice are currently having further discussions on these two Items;
 - c) Item 19;
 - d) Item 20;
 - e) Item 21;
 - f) Item 27;
 - g) Item 28
 - h) Item 34;
 - i) Item 36A;
 - j) Item 38; and
 - k) Item 39.
7. The following item relating to clause 21.1(b) is a United Voice item it continues to press, and is opposed by the Associations:
- a) Item 46 with respect to an immediate increase to the Tool Allowance.

Ongoing Discussions

8. The AHA and United Voice are continuing to have discussions about matters in dispute.

Yours faithfully,

PHILLIP RYAN
National Director, Legal and Industrial Affairs
Australian Hotels Association

NATALIE DABARERA
Industrial Officer
United Voice

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. In clause 3.1, inserting the following definitions:

“junior employee means an employee under the age of 20 who is not undertaking a nationally recognised traineeship or apprenticeship”.

2. By inserting a new sub clause 14.12:

“14.12 Competency based progression

- (a) For the purpose of competency based wage progression in clause 20.4 an apprentice will be paid at the relevant wage rate for the next stage of their apprenticeship if:
 - (i) competency has been achieved in the relevant proportion of the total units of competency specified in clause 20.4 for that stage of the apprenticeship. The units of competency which are included in the relevant proportion must be consistent with any requirements in the training plan; and
 - (ii) any requirements of the relevant State/Territory apprenticeship authority and any additional requirements of the relevant training package with respect to the demonstration of competency and any minimum necessary work experience requirements are met; and
 - (iii) either:
 - (A) the Registered Training Organisation (RTO), the employer and the apprentice agree that the abovementioned requirements have been met; or
 - (B) the employer has been provided with written advice that the RTO has assessed that the apprentice meets the abovementioned requirements in respect to all the relevant units of competency and the employer has not advised the RTO and the apprentice of any disagreement with that assessment within 21 days of receipt of the advice.
- (b) If the employer disagrees with the assessment of the RTO referred to in clause 14.12(a)(iii)(B) above, and the dispute cannot be resolved by agreement between the RTO, the employer and the apprentice,

¹ [Insert decision reference]

the matter may be referred to the relevant State/Territory apprenticeship authority for determination. If the matter is not capable of being dealt with by such authority it may be dealt with in accordance with the dispute resolution clause in this award. For the avoidance of doubt, disputes concerning other apprenticeship progression provisions of this award may be dealt with in accordance with the dispute resolution clause.

- (c) For the purposes of this clause, the training package containing the qualification specified in the contract of training for the apprenticeship, sets out the assessment requirements for the attainment of the units of competency that make up the qualification. The definition of “competency” utilised for the purpose of the training packages and for the purpose of this clause is the consistent application of knowledge and skill to the standard of performance required in the workplace. It embodies the ability to transfer and apply skills and knowledge to new situations and environments.
- (d) The apprentice will be paid the wage rate referred to in clause 14.12(a) from the first full pay period to commence on or after the date on which an agreement or determination is reached in accordance with clause 14.12(a)(iii) or on a date as determined under the dispute resolution process in clause 14.12(b)
- (e) If the apprentice disagrees with the assessment of the RTO referred to in clause 14.12(a), and the dispute cannot be resolved by agreement between the RTO, the employer and the apprentice, the apprentice may refer the matter to the relevant State/Territory apprenticeship authority for determination. If the matter is not capable of being dealt with by such authority it may be dealt with in accordance with the dispute resolution clause in this award. For the avoidance of doubt, disputes concerning other apprenticeship progression provisions of this award may be dealt with in accordance with the dispute resolution clause”.

3. By deleting clause 20.4 and inserting the following:

“20.4 Apprentice wages

(a) Apprentices other than Waiting apprenticeship

- (i) A person who has completed a full apprenticeship for which there is a trade qualified classification provided for in this award, must be paid no less than the standard hourly rate for each hour worked.
- (ii) Except where clause 20.4(a)(iii) is applicable an employee will be paid the percentage of the standard hourly rate for each hour worked, in accordance with the following table:

Year	%
First	55
Second	65
Third	80
Fourth	95

(iii) Competency based wage progression

Where the relevant apprenticeship legislation allows competency based progression and the training contract does not specify otherwise, an employee apprenticed in a trade after

<insert date of the Determination> will be paid the percentage of the standard hourly rate for each hour worked, in accordance with the following table:

(A) Four year apprenticeship (nominal term)

Stage of apprenticeship	Minimum training requirements on entry	% of the standard hourly rate
Stage 1	On commencement and prior to the attainment of the minimum training requirements specified for Stage 2	55
Stage 2	On attainment of 25% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 12 months after commencing the apprenticeship, whichever is the earlier.	65
Stage 3	On attainment of 50% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 12 months after commencing Stage 2, whichever is the earlier.	80
Stage 4	On attainment of 75% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 12 months after commencing Stage 3, whichever is the earlier.	95

(B) Three year apprenticeship (nominal term)

Stage of apprenticeship	Minimum training requirements on entry	% of the standard hourly rate
Stage 1	On commencement and prior to the attainment of the minimum training requirements specified for Stage 2	55
Stage 2	On attainment of 25% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 9 months after commencing the apprenticeship, whichever is the earlier.	65

Stage 3	On attainment of 50% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 9 months after commencing Stage 2, whichever is the earlier.	80
Stage 4	On attainment of 75% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 9 months after commencing Stage 3, whichever is the earlier.	95

(b) Waiting apprenticeship

- (i) Any person who has completed a full apprenticeship as a qualified tradesperson must be paid not less than the standard hourly rate for each hour worked.
- (ii) Except where clause 20.4(b)(iii) is applicable, an employee apprenticed in the waiting trade will be paid the relevant percentage or portion of the standard hourly rate for each hour worked, in accordance with the following table:

First six months	70%
Second six months	85%
Third six months	Midway between the total rate prescribed for food and beverage attendant grade 2 (waiter) in clause 20.1 and the standard weekly rate; and
Fourth six months	Midway between the total rate prescribed for third six months, above, and the standard weekly rate.
- (iii) Where the relevant apprenticeship legislation allows competency based progression and the training contract does not specify otherwise an employee apprenticed in the waiting trade after **<insert date of the Determination>** will be paid the percentage of the standard hourly rate for each hour worked, in accordance with the following table:

(A) Two year waiting apprenticeship (nominal term)

Stage of apprenticeship	Minimum training requirements on entry	% of the standard hourly rate
Stage 1	On commencement and prior to the attainment of the minimum training requirements specified for Stage 2	70
Stage 2	On attainment of 25% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 6 months after commencing the apprenticeship, whichever is the earlier.	85

Stage 3	On attainment of 50% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 6 months after commencing Stage 2, whichever is the earlier.	Midway between the total rate prescribed for food and beverage attendant grade 2 (waiter) in clause 20.1 and the standard hourly rate
Stage 4	On attainment of 75% of the total competencies specified in the training plan for the relevant AQF Certificate III qualification; or 6 months after commencing Stage 3, whichever is the earlier.	Midway between the total rate prescribed for stage 3, above, and the standard hourly rate

- (c) Proficiency payments—cooking trade
- (i) Application
Proficiency pay as set out in clause 20.4(c)(ii) will apply to apprentices who have successfully completed their schooling in a given year.
- (ii) Payments
- (iii) Apprentices must receive the standard hourly rate during the latter half of the fourth year of the apprenticeship where the standard of proficiency has been attained on one, two or three occasions on the following basis:
- (1) one occasion only:
- for the first nine months of the fourth year of apprenticeship, the normal fourth year rate of pay;
 - thereafter, the standard hourly rate.
- (2) on two occasions:
- for the first six months of the fourth year of apprenticeship, the normal fourth year rate of pay;
 - thereafter, the standard hourly rate.
- (3) on all three occasions:
- for the entire fourth year, the standard hourly rate.
- (d) Proficiency payments—waiting trade
- (i) Application
Proficiency pay as set out in clause 20.4(d)(ii) will apply to level 2 apprentices who have successfully completed their schooling in the first year.
- (ii) Payments
Apprentices who have attained the standard of proficiency in their first year must receive the standard hourly rate for each ordinary hour worked during the latter half of the second year of apprenticeship.
- (e) Adult apprentices
- (i) The minimum hourly wage for an adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship must be 80% of the minimum hourly wage for Level 4 in clause 20.4(a) or 20.4(b), or the rate prescribed by clause 20.4(a) or 20.4(b) for the relevant year or stage of the apprenticeship, whichever is the greater.
- (ii) The minimum hourly wage for an adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be the rate for the

lowest adult classification in clause 20.1, or the rate prescribed by clause 20.4(a) or 20.4(b) for the relevant year or stage of the apprenticeship, whichever is the greater.

- (iii) A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum hourly wage by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least six months as a full-time employee or twelve months as a part-time or regular and systematic casual employee immediately prior to commencing the apprenticeship. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clause 20.1 or 20.3 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

- 4. By deleting clause 21.1(b)(i), and inserting the following:

“Where a cook or apprentice cook is required to use their own tools, the employer must pay an allowance of \$1.55 per day or part thereof up to a maximum of \$7.60 per week.”

- 5. By deleting the second row of the table in clause 21.1(j) and replacing it with the following:

“Clothing allowance	Clothing and footwear group
Equipment and tools allowance	Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group”

- 6. By deleting clause 21.1(h) and inserting the following:

“(h) Working away from usual place of work

This clause applies where an employer requires an employee other than a casual to work at a place more than 80 kilometres from the employee’s usual place of work. In these circumstances the employer must pay the employee an amount equal to the cost of fares reasonably spent by the employee in travelling from the employee’s usual place of work to the new place of work.”

- 7. By deleting clause 21.2(a) and inserting the following:

“(a) Fork-lift driver

- (i) In addition to the wage rates set out in clause 20.1, a fork-lift driver must be paid an additional hourly allowance equal to 1.5% of the standard weekly rate divided by 38 for all purposes.
- (ii) A part-time or casual fork-lift driver who was employed immediately prior to <insert date of the Determination> must, in addition to the wage rates

set out in clause 20.1, be paid an additional allowance, per day, equal to 0.3% of the standard weekly rate, to a maximum of 1.5% of the standard weekly rate per week. A part-time or casual employee in receipt of the daily fork-lift driver allowance under this subclause may elect to receive the fork-lift driver allowance under subclause (i).”

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 XXX XXXX 2018.

PRESIDENT