



Accommodation
Association
of Australia

8 March, 2012

Fair Work Australia
11 Exhibition Street
MELBOURNE VIC 3000

Dear Sir or Madam,

Please find following the application to vary the Hospitality (General) Award 2012.

The Accommodation Association of Australia makes this application to vary a number of the Award's provisions on its own behalf, and having obtained feedback from its members (approximately 2000 accommodation providers around Australia) about the operation of the Award and its terms and conditions as laid out in the following documents.

Yours Sincerely,

Richard Munro,

A handwritten signature in black ink, appearing to read 'Richard Munro', is written over a faint, larger version of the signature.

CEO.

APPLICATION TO VARY A MODERN AWARD - 2012 REVIEW

Application to vary a modern award (*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009, Part 2 of Schedule 5*)


Applicant

| | | | |
|--|---|-------------------|---------------------------|
| Name: | Accommodation Association of Australia | | |
| | Title [<i>if applicable</i>] Mr <input checked="" type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other <input type="checkbox"/> specify: | | |
| Address: | Suite 1, Level 2, 189 Kent Street | | |
| Suburb: | Sydney | State: NSW | Postcode: 2000 |
| If the Applicant is a company or organisation: | | | |
| Contact person: | Richard Munro | ABN: | 32088943239 |
| Contact details for the Applicant or contact person (if one is specified): | | | |
| Telephone: | 02 86669015 | Mobile: | 0417 466 997 |
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Applicant's representative (if any)

| | |
|--|---|
| Name: People + Culture Strategies | ABN: [<i>If applicable</i>] |
| Address: Level 2, 56 Clarence Street, | |
| Suburb: Sydney | State: NSW Postcode: 2000 |
| Contact person: Kathryn Dent - | |
| Telephone: 02 8094 3107 | Mobile: 0412 126 366 |
| Fax: | Email: kathryn.dent@peopleculture.com.au |

- 1. What is the name of the modern award to which the application relates?**
[Also include the Award ID/Code No. of the modern award.]
MA000009 Hospitality Industry (General) Award 2010
- 2. What variation(s) are sought?**
[Set out, or attach a separate schedule the variation(s) sought.]
See Schedule A
- 3. Grounds:**
[Using numbered paragraphs, set out, or attach as a separate schedule, the grounds upon which the Applicant relies in seeking such variation(s) and, an outline of the submissions to be made in relation to each ground and an indication of the evidence and other material upon which the applicant will seek to rely.]
See Schedule B

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| Date: 08/03/2012 |
| Signature:  |
| Name: Richard Munro |
| Capacity/Position: CEO |

SCHEDULE A

APPLICATION TO VARY A MODERN AWARD – 2012 REVIEW

VARIATIONS SOUGHT TO THE *HOSPITALITY INDUSTRY (GENERAL) AWARD 2010*

The Accommodation Association of Australia (the “AAA”) applies to Fair Work Australia to vary the terms and conditions of the *Hospitality Industry (General) Award 2010* as follows:

1 Clause 7 Award flexibility (insert an approval process)

Delete clause 7.6 and insert in substitution:

7.6 In addition and separate to any consent required as provided in clause 7.4(a), if the employer and the employee reach agreement in accordance with this clause 7, then they will submit the agreement to Fair Work Australia or the Fair Work Ombudsman for approval which is the only other body or person whose approval to the agreement is required.

2 Clause 10.3 Provisions for multi-hiring (insert a provision)

Insert a new clause 10.3:

10.3 An employer may engage full-time and part-time employees separately as casual employees for any duties in a separate section of the employer’s establishment from that in which the employee is engaged in their full-time or part-time employment. Such employees shall be paid the rate of pay for a casual employee engaged to perform duties in the relevant section of the establishment and this will not be counted as part of their ordinary hours of work which may attract overtime.

For example: for instance, an employer employs an employee to work part-time as a receptionist and also in its restaurant on a casual basis as a waiter.

3 Clause 12 Part-time employment (vary to allow flexible hours of work)

Delete clause 12.2 and insert in substitution:

12.2 A part-time employee is an employee who:

- (a) works less than full-time hours of 38 per week;*
- (b) is paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed in clause 20—Minimum wages, for the work performed;*
- (c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work; and*
- (d) is regularly employed for no less than 15 hours each week and no more than 152 hours per four week period, subject to the following conditions:*

- (i) *A minimum of three hours and a maximum of 11 and a half hours may be worked on any day. The daily minimum and maximum hours are exclusive of meal break intervals.*
- (ii) *An employee cannot be rostered to work for more than 10 hours per day on more than three consecutive days without a break of at least 48 hours immediately following.*
- (iii) *No more than eight days of more than 10 hours may be worked in a four week period.*
- (iv) *Employees shall be entitled to a minimum of eight days off per each four week period.*

Delete clauses 12.3, 12.4, 12.5, 12.7 and 12.8.

Re-number clause 12.6 as clause 12.3.

Insert a new clause 12.4:

12.4 Subject to clause 10.3, all time worked in excess of a part-time employee's ordinary hours of work will be overtime and paid for at the rates prescribed in clause 33–Overtime.

For consistency with the above variations to clause 12, in clause 33.2, delete reference to “clause 12.7” and insert in substitution “clause 12.4”, and delete second bullet point in clause 13.4(g) which commences “if it is agreed...”.

4 Clause 29 Ordinary hours of work (vary as regards averaging of ordinary hours of work)

Delete clause 29.1 and insert in substitution:

29.1 The hours of work of a full-time employee are an average of 38 per week in their full-time position and do not include any hours worked as a casual employee pursuant to clause 10.3. The hours may be averaged over a period not exceeding 52 weeks.

5 Clause 31 Meal breaks (vary and clarify entitlement)

Delete clauses 31.1, 31.2 and 31.4, and insert a new clause 31.1 in substitution:

31.1 If an employee, including a casual employee, is required to work for more than six hours in a day they must be given an unpaid meal break of no less than 30 minutes. The break must be given no earlier than one hour after starting work and no later than six hours after starting work.

Re-number clause 31.3 as clause 31.2.

Insert a new clause 31.3:

31.3 *By mutual agreement on a particular day or shift, employees may take their meal on the job without taking a meal break, and if so may cease work 30 minutes before they would have otherwise finished work, without loss of pay or entitlement to penalty rates.*

Renumber clauses 31.5 to 31.7 as clauses 31.4 to 31.6.

6 Clause 32 Penalty rates (vary excessive penalty rates)

Delete clause 32.1 and insert in substitution:

32.1 *An employee performing work on the following days will be paid the following percentage of the minimum wage rate in clause 20 – Minimum wages for the relevant classification:*

| | <i>Monday to Friday</i> | <i>Saturday</i> | <i>Sunday</i> | <i>Public holiday</i> |
|---|--------------------------------|------------------------|----------------------|------------------------------|
| <i>Full-time and part-time</i> | <i>100%</i> | <i>125%</i> | <i>150%</i> | <i>250%</i> |
| <i>Casual (inclusive of 25% casual loading)</i> | <i>125%</i> | <i>125%</i> | <i>150%</i> | <i>250%</i> |

7 Clause 34 Annual leave (vary to allow cashing out of annual leave)

Insert a new clause 34.5:

34.5 *Cashing out of paid annual leave*

Paid annual leave may be cashed out by an employee provided that the following circumstances are met:

- (a)** *the employee and employer must make a separate agreement in writing to cash out each amount of paid annual leave;*
- (b)** *a balance of no less than four weeks' annual leave must remain; and*
- (c)** *the particular amount of paid annual leave cashed out must be at least the full amount that would have been payable to the employee had the employee taken the annual leave foregone.*

8 Clause 39 Provision of employee accommodation and meals (vary deductions)

Delete clause 39.2, and insert in substitution:

39.2 *Adult wages*

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.

- *provision of accommodation is of a transient nature for tourists and travellers only;*
and
- *the premises in which the business is conducted contain not less than 150 units of accommodation for guests.*

SCHEDULE B

APPLICATION TO VARY A MODERN AWARD – 2012 REVIEW

GROUND ON WHICH VARIATIONS SOUGHT TO THE *HOSPITALITY INDUSTRY (GENERAL) AWARD 2010*

The grounds on which the Accommodation Association of Australia (the “AAA”) applies to Fair Work Australia to vary the terms and conditions of the *Hospitality Industry (General) Award 2010* (the “Award”), including an outline of the submissions, are as follows.

The AAA makes this application to vary a number of the Award’s provisions on its own behalf, and having obtained feedback from its members (approximately 2000 accommodation providers around Australia) about the operation of the Award and its terms and conditions, to:

- (a) counter increased employment costs and the regulatory burden experienced by its members due to the operation of the Award, which have decreased productivity in accordance with one of the modern awards objectives (s 134(1)(f) of the *Fair Work Act 2009* (the “FW Act”));
- (b) correct some anomalies and technical problems;
- (c) ensure that the Award is simple and easy to understand and follow in accordance with one of the modern awards objectives (s 134(1)(g) of the FW Act; and
- (d) ensure that the Award does not impede employment growth, sustainability, performance and competitiveness of the national economy in accordance with one of the modern awards objectives (s 134(1)(h) of the FW Act).

The AAA would be prepared to provide more detailed evidence during the Modern Award Review.

1 Clause 7 Award flexibility

The AAA’s members have been reluctant to use this provision to enter into individual flexibility arrangements with their employees because:

- (a) the test of determining whether an employee will be “better off overall” is often considered to be subjective; and
- (b) the arrangement is not validated or approved by any authority.

AAA’s members are concerned that they may inadvertently breach the Award, with potentially severe financial consequences, by entering into arrangements with employees which do not pass the better off overall test.

AAA applies for a variation to clause 7 to impose a requirement for approval by an external authority.

2 Clause 10.3 Provisions for multi-hiring

Employees frequently request a “second job” in an employer’s establishment. While AAA’s members would usually be willing to oblige, if that employee has already worked 38 hours in a given week in their first job, then the AAA members are concerned that they may be obliged to pay the employee at overtime rates for work undertaken in the second job. This imposes an additional monetary burden on the employer which may be uneconomical, and thus prevent the employer from engaging the employee in this capacity which does not promote productive performance of work, and directly impacts on the employer’s business’ productivity. On a broader scale this has a cumulative impact on the performance and competitiveness of the national economy (all of which detract from the modern awards objectives at ss.134(1)(d)(f) and (f) of the FW Act).

The AAA applies for a variation to insert a new clause 10.3 to provide that an employer may engage an employee in a second position, in a separate area as a casual employee.

3 Clause 12 Part-time employment

Staffing levels in the hospitality industry fluctuate considerably and often unpredictably. The Award presently requires part-time engagements to be for regular and predictable hours. As a consequence, employment of casual workers is at an undesirably high level, as employing workers on a casual basis affords AAA’s members more flexibility.

Variation to the Award as suggested may provide increased capacity to convert casual staff to part-time employment, facilitating greater incentive for training, improved skills base and career retention.

The AAA applies for variations to clause 12 to enable employers to engage employees in a part-time capacity. The aim of the variations is to afford employees the security and benefits of part-time employment, while allowing employers greater flexibility to match the demands of the hospitality industry.

4 Clause 29 Ordinary hours of work

The Award allows for averaging of an employee’s 38 ordinary hours of work per week over a four week period. However, under legislation prior to the FW Act, it was possible for an employee’s hours to be averaged over 52 weeks. This provided some flexibility for employees to work, by agreement, in excess of 38 hours per week in busy peak times, and fewer than 38 hours during quieter periods. In addition, there is no restriction on averaging over this period under the FW Act.

The AAA applies for clause 29.1 to be varied to enable an employee’s 38 hours of work per week to be averaged over a 52 week period. The aim of this variation is to reinstate earlier increased flexibility in this regard, which the AAA’s members consider is necessary in view of the fluctuating nature of the staffing needs in the industry depending on seasons and economic conditions which impact unpredictably on the hospitality industry.

5 Clause 31 Meal breaks

The wording in clause 31 which provides entitlements to “meal breaks” is ambiguous and contains anomalies. To rectify these concerns, the AAA applies for clause 31 to be varied so that employees will be entitled to an unpaid meal break of at least 30 minutes, if required to work for more than six hours in a day.

Further, the AAA applies for clause 31 to be varied to allow employees to take their meal “on the job”, in exchange for a shortened shift or hours of work. This is considered essential for many small accommodation operators, whose employees frequently work alone and cannot leave their station to take a meal break. This proposed variation would be consistent with ss.134(1)(d) and (f) of the modern awards objective, being the need to promote flexible work practices and has regard to impact on productivity and employment costs.

6 Clause 32 Penalty rates

The weekend and public holidays penalty rates as presently provided for by the Award impact on the productivity of small businesses, especially as the penalties apply equally to both small and larger businesses.

When consumer demand is often the highest, labour costs force many small businesses, restaurants in particular, to restrict trade or not trade at all on weekends or public holidays. This is detrimental to business, consumers, tax revenue and opportunities for employees.

Traditionally, students and people with family commitments during the week form a large part of the workforce for accommodation providers, and have always been willing and available for casual weekend or public holiday work. Sustainable penalty rates would increase employment opportunities for these people within the sector which is consistent with the modern award objective in s 134(c) of the FW Act to promote social inclusion through increased workforce participation. The AAA applies for clause 32 to be varied to decrease the excessive penalty rates presently contained therein. This proposed variation would be consistent with ss 134(1)(d) and (f) of the modern awards objective in the FW Act, being the need to promote flexible work practices, and has regard to productivity and employment costs as well as encouraging workforce participation set out in s 134(1)(c) of the FW Act as a modern awards objective.

7 Clause 34 Annual leave

The AAA agrees that annual leave is a necessary entitlement, and encourages employees to use their leave from a “no leave, no life” perspective.

However, it has been the experience of the AAA’s members that some employees request that their annual leave be cashed out. This is especially in the case of employees who have been employed for a number of years, who may request to be availed of a part of their annual leave entitlement, and concurrently to cash out a remaining part of their annual leave entitlement. The capacity to pay out leave also enables businesses to better manage the debt held to staff for leave entitlement.

The AAA's members do not have the ability at present to do so, as the Award does not allow for cashing out. There is no cogent reason for Award employees to be disadvantaged when compared to non-award employees who are allowed this benefit under the National Employment Standards.

The AAA applies for clause 34 to be varied to enable its members to have the option, where an employee requests, to cash out annual leave (within accepted confines). This is consistent with the modern awards objective, in particular, s.134(1)(a) relative living standards and needs of the low paid.

8 Clause 39 Provision of employee accommodation and meals

The accommodation and meals provided for in clause 39 require adjustment.

The AAA applies to vary the prescribed deductions for the provision of accommodation and meals in clause 39, to accord more closely with the various levels of accommodation provided to employees, and to set deductions closer to market values. This change would be consistent with the modern awards objective and in particular s 134(1)(f) of the FW Act, that modern awards should have regard to the impact on business and productivity.

9 Schedule D Managerial staff – hotels

The Award includes provisions for managerial employees in an "Accommodation Hotel" (this relates to the classification set out in clause 20.2, and the definitions relevantly contained in item D.2.9 of Schedule D of the Award). However, the term Accommodation Hotel is not defined in the Award. This has created uncertainty for some of the AAA's members about whether those members could be considered to be Accommodation Hotels, and if so, subject to the managerial provisions in question.

The AAA applies to insert a definition of "Accommodation Hotel" to resolve this uncertainty.