

## IN THE FAIR WORK COMMISSION

**Matter No:**  
AM2021/54  
CASUAL TERMS AWARD REVIEW 2021

**Party:**  
AUSTRALIAN HOTELS ASSOCIATION

### SUBMISSIONS

1. This submission is put on behalf of the Australian Hotels Association (**AHA**) in response to the statement and directions of the Fair Work Commission (**Commission**) issued on 23 April 2021<sup>1</sup>, which invited submissions in response to a discussion paper published on 19 April 2021.
2. The AHA submission addresses the questions that have been posed in the discussion paper as they relate to the *Hospitality Industry (General) Award 2020* (**Hospitality Award**).
3. For all other questions relating generally to the Commission's discussion paper, the AHA supports the submissions of the Australian Chamber of Commerce and Industry.
4. For ease, the specific questions addressed by the AHA are listed on the following pages together with the AHA's submissions.

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<sup>1</sup> [2021] FWCFB 2222

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## Definition of casual employee / casual employment

5. Question 3: *Has Attachment 1 to this discussion paper wrongly categorised the casual definition in any award?*
6. The AHA submits that with respect to the Hospitality Award, the casual definition has not been wrongly categorised.
7. Question 4: *For the purposes of Act Schedule 1 cl.48(2):*
  - *is the 'engaged as a casual' type casual definition (as in the Retail Award, Hospitality Award and Manufacturing Award) consistent with the Act as amended, and*
  - *does this type of definition give rise to uncertainty or difficulty relating to the interaction between these awards and the Act as amended?*
8. The AHA submits that with respect to the Hospitality Award, the definition is not consistent with the *Fair Work Act 2009 (Act)* as amended.
9. The AHA further submits that in relation to the Hospitality Award definition and the Act as amended, the interaction between the two gives rise to uncertainty or difficulty.
10. Question 8: *For the purposes of Act Schedule 1 cl.48(3), would replacing the casual definitions in the Retail Award, Hospitality Award, Manufacturing Award, Teachers Award and Pastoral Award with the definition in s.15A of the Act or with a reference to that definition, make the awards consistent or operate effectively with the Act as amended?*
11. With respect to the Hospitality Award, the AHA submits that clause 11.1 (the casual definition) be varied and replaced with a reference to section 15A of the Act as amended.
12. Question 9: *If an award is to be varied to adopt the casual definition in s.15A of the Act, should the Commission give advanced notice of the variation and the date it will take effect?*

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13. The AHA is mindful of the requirement of Act Schedule 1, cl. 48(4), however, it submits that it would be preferable for advance notice to be given.

**Permitted types of employment, residual types of employment and requirements to inform employees**

14. Question 10: *For the purposes of Act Schedule 1 cl.48(2):*

- *are award requirements to inform employees when engaging them that they are being engaged as casuals (as in the Manufacturing Award and Pastoral Award) consistent with the Act as amended, and*
- *do these requirements give rise to uncertainty or difficulty relating to the interaction between these awards and the Act as amended?*

15. At clause 8.2 of the Hospitality Award, employers are required to advise employees on engagement whether they are being employed on a full-time, part-time or casual basis. The AHA submits that this requirement is consistent with the Act as amended.

16. Further, this requirement does not give rise to uncertainty or difficulty.

**Related definitions and references to the NES**

17. Question 13: *Are outdated award definitions of 'long term casual employee' and outdated references to the Divisions comprising the NES (as in the Retail Award and Hospitality Award) relevant terms?*

18. The AHA submits that the Hospitality Award contains a definition of *long term casual employee* at clause 2. The term does not appear anywhere else in the Hospitality Award.

19. The AHA submit that for the purposes of the Act Schedule 1, the *long term casual employee* definition is a relevant term. Is it, however, an irrelevant definition and should be removed from the Hospitality Award.

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## Casual minimum payment or engagement, maximum engagement and pay periods

20. Question 15: *Are award clauses specifying:*

- *minimum casual payments (as in the Retail Award, Hospitality Award, Manufacturing Award, Teachers Award and Pastoral Award)*
  - *casual pay periods (as in the Retail Award, Hospitality Award and Pastoral Award)*
  - *minimum casual engagement periods (as in the Hospitality Award), and*
  - *maximum casual engagement periods (as in the Teachers Award)*
- relevant terms?*

21. The AHA submits that with respect to the Hospitality Award, the award clauses identified at this question are not relevant terms for the purposes of Schedule cl 48(2)(a).

22. Question 16: *For the purposes of Act Schedule 1 cl.48(2):*

- *are such award clauses consistent with the Act as amended, and*
- *do such award clauses give rise to uncertainty or difficulty relating to the interaction between these awards and the Act as amended?*

23. The AHA submits that in respect of the Hospitality Award, the award clauses are consistent with the Act, and that they do not give rise to uncertainty or difficulty.

## Casual loadings and leave entitlements

24. Questions 17 and 18

With respect to the Hospitality Award, the provision for casual loading is a relevant term.

25. It is noted that the definition of the casual loading, that is, the description of what the casual loading represents compensation for, is no longer a feature of the Hospitality Award. A definition appeared in the 2010 version, however it does not appear in the 2020 plain language version.

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26. For the purposes of Act Schedule 1 cl. 48(2), the AHA submits that the absence of an award specification of the entitlements the casual loading is paid in compensation for in the Hospitality Award gives rise to uncertainty or difficulty relating to the interaction between the Hospitality Award and the Act.

27. The AHA submits that the Hospitality Award should be varied to include a specification such as the one at clause 11.3, Note 1 of the Retail Award.

### **Other casual terms and conditions of employment**

28. Questions 19 and 20:

Clause 11.3 of the Hospitality Award specifies the maximum engagement of a casual employee per day, as well as per week (or as averaged). The operation of this clause is also applicable for the purposes of calculating overtime payments.

29. The AHA submits that clause 11.3 is a relevant term, and that it does not give rise to uncertainty or difficulty relating to the interaction between the Hospitality Award and the Act as amended.

### **Hospitality Award casual conversion clause**

30. Questions 28 – 30

The AHA submits that for the purposes of Act Schedule 1 cl.48(2), the casual conversion clause at 11.7 of the Hospitality Award is not consistent with the Act as amended. Clause 11.7 therefore gives rise to uncertainty or difficulty relating to the interaction between it and the Act.

31. The Hospitality Award casual conversion clause is not more beneficial than the residual right to request casual conversion under the NES, and it is detrimental in some respects when compared to the residual right to request casual conversion under the NES.

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32. Question 31: *For the purposes of Act Schedule 1 cl.48(3), would removing the Hospitality Award casual conversion clause from the award, or replacing it with a reference to the casual conversion NES, make the award consistent or operate effectively with the Act as amended?*

33. The AHA's response to this question is yes.

34. The AHA submits that in respect of the Hospitality Award, deleting clause 11.7 and replacing it with the reference that casual conversion entitlements as provided for the NES apply, would be appropriate.

35. Question 32: *If the casual conversion clause was removed from the Hospitality Award, should other changes be made to the award so that it operates effectively with the Act as amended (for example, adding a note on resolution of disputes about casual conversion)?*

36. The AHA submits that no other changes are necessary for the Hospitality Award to operate effectively with the Act as amended. Further, with respect to the example provided in this question, the AHA submits that such a note is not necessary as Hospitality Award clause 40, dispute resolution, applies to disputes under the award, or the NES.

**For the Australian Hotels Association**

**24 May 2021**