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Modern Awards Review 2023-24 (AM2023/21)

INTRODUCTION

The Fair Work Commission (**Commission**) has started a review of modern awards after receiving a request from the Minister for Employment and Workplace Relations. The Modern Awards Review 2023-24 (**Review**) will look at four priority topics:

- **Arts and Culture Sector** – this topic will look at which awards cover workers and the minimum standards in the arts and culture sector.
- **Job Security** – this topic will consider whether modern award provisions support the objective of promoting job security and the need to improve access to secure work across the economy.
- **Work and Care** – this topic will look at how award terms can impact workers with caring responsibilities.
- **Making the most commonly used awards easier to use** - this topic will invite interested parties to make proposals on how to do this, without reducing entitlements for workers.

The Australian Hotels Association (**AHA**) welcomes the opportunity to make a submission to the Commission, **to advance proposals to make modern awards easier to use**. The AHA has limited its proposals to the following modern awards most commonly used by its membership:

- *Hospitality Industry (General) Award 2020* [MA000009] **(HIGA)**
- *Restaurant Industry Award 2020* [MA000119] **(RIA)**
- *General Retail Industry Award 2020* [MA000004] **(GRIA)**

The AHA confirms it can appear at the Commission's consultation hearings to discuss these proposals in further detail and to assist in providing further information, if needed.

THE AHA AND ITS MEMBERS

The Australian Hotels Association (**AHA**) is an organisation of employers in the hotel and hospitality industry registered under the *Fair Work (Registered Organisations) Act 2009.* Its diverse membership of more than 5,600 businesses includes pub-style hotels plus three, four and five-star international accommodation hotels. AHA members provide a wide range of services to the Australian public including accommodation, food, beverage, wagering, gaming, retail liquor, functions, events, live music, and entertainment.

The AHA's members are serviced by branches located in every Australian state and territory and a Canberra-based national office. As well as being members of their respective state or territory branch, accommodation hotels are represented by the National Accommodation Division. The AHA branches employ 15 lawyers and specialists providing advice to members on workplace relations, including advice on awards and the *Fair Work Act 2009* (**the Act**).

The Australian hotel industry is a 24/7 labour intensive service industry and is a key element of Australia's tourism industry. The makeup of the hotel workforce is extremely diverse and includes adults of all genders, ages and nationalities. The AHA member workforce comprises:

- Over 300,000 workers.
- 50% of members offer apprenticeships.
- 60% of employees are female.
- 65% of businesses are family owned with family members working in the business.

The hotel industry also draws on a diversity of skills including skilled, unskilled, and entry level workers. Occupations include:

- Food, beverage, and retail staff
- Chefs, cooks, and kitchenhands
- Maintenance, security, cleaners, and room division
- Managers, marketing, finance, and front office

Categories of employment percentages are:

- Casual - 55%
- Full time - 30%
- Part time - 12%
- Fixed term - 3%

Employee ages:

- 18 to 24 years - 36%
- 25 to 44 years - 39%
- 45 to 64 years – 24%
- 65 years plus -1%

OVERARCHING PROPOSALS

Complexity leads to errors

Modern awards are lengthy and complex industrial instruments. The HIGA alone is 150 pages but must also be read in conjunction with the National Employment Standards and the *Fair Work Act 2009* (Cth) which is 1,267 pages.

This interrelationship and the sheer volume of these documents adds to complexity and makes the correct interpretation and application of the frequently updated terms and conditions all the more challenging for employers without specialist in-house expertise and particularly for small business. This complexity is a key driver of unintentional underpayment of wages and other compliance challenges.

Modern awards and legislation drafted by lawyers can be difficult to understand if you aren't one. The modern award objective of ensuring a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards has been a key focus for

the proposals put forward by the AHA[1]. Any steps to simplify awards will be of benefit to workers and employers alike.

Job security and the need to improve access to secure work across the economy

For many workers, part-time employment is preferred to casual employment. This is because part-time employment provides the security of employment and certainty of minimum pay each week. This is highly desirable as workers are then able to budget more easily and prove regular income for purposes including bank loans and rental agreements.

For employers in the hospitality industry, flexible modern work practices and the efficient and productive performance of work[2] is not compromised by secure forms of employment, due in large part to the flexible part-time provisions provided in clause 10 of the HIGA and in the RIA. Under these provisions, an employee and an employer reach agreement on the number of guaranteed hours and on a band of hours that the employee can be rostered to perform their guaranteed hours each week. This band of hours offers flexibility for both the employee and the employer whilst retaining the safeguards of minimum and maximum engagements and payment for overtime.

These flexible part-time provisions are not reflected in the GRIA or in the other modern awards subject to this review. Employers operating under these modern awards are limited in the flexibility they can afford to permanent employees. For workers who seek flexibility in their employment arrangements to balance other commitments (i.e. university schedules or caring responsibilities), this has traditionally seen such employees shy away from conversion to part-time status due to the rigidity of the part-time provisions.

While casual employment may be the preference of some employees who seek flexibility, the AHA contends that this flexibility ought not to come at the expense of employment security or entitlement to paid leave, for other employees who seek secure work.

The AHA submits that the flexible part-time provisions provided in clause 10 of the HIGA should be inserted into the other modern awards, specifically into the GRIA as part of this review process. This will improve access to secure work, will increase flexibility for workers and the employer and will achieve consistency between the different awards which could apply side by side in the AHA's members' business.

HOSPITALITY INDUSTRY (GENERAL) AWARD 2020

The AHA makes the following proposals in relation to the HIGA.

1. **DEFINITIONS** (clause 2)

a. '**Appropriate level of training'** as presently defined is not fit for purpose, having regard to the nature of the hospitality industry and the employment patterns adopted by the hospitality workforce.

   The definition lends itself to the fact that an employee may have the 'appropriate level of training' if they have completed the equivalent of one or more designated units of competency from a training package, rather than actually completing a qualification or training program. For example, a

[1] As per section 134(1)(g) of the *Fair Work Act 2009* (Cth).
[2] As per section 134(1)(d) of the Act.

kitchen attendant could claim they have the 'appropriate level of training' needed to progress to the next classification because they have completed just one unit of the Certificate II in Cookery (i.e. use hygienic practices for food safety). If an employee has not wholly completed the appropriate level of training to attain a qualification, they cannot be classified at certain classifications in the HIGA, even if their duties fall within that level. This leads to confusion on the part of employees and discontent at the barrier to their progression.

Recommendation:	1. To remove 'appropriate level of training' from the HIGA and rely on a work value assessment to enable appropriate classification based on work performed and accessible progression in the classification structure. Consequential amendments would need to be made within the classification definitions. Certain classifications which require trade qualifications would not be disturbed by this amendment. For example: *The classification by the employer must be based on the characteristics that the employer requires the employee to have, and skills that the employer requires the employee to exercise, in order to carry out the principal functions of the employment.*[3] In the alternative: 2. Amend the definition to be as follows: ***appropriate level of training**, in relation to an employee other than a casino gaming employee, means that the employee:* *(a) has completed an appropriate training program that meets the training and assessment requirements of a whole vocational qualification under the Australian Qualifications Framework (AQF); or* *(b) has been assessed by a qualified skills assessor as having skills at least equivalent to those attained in an appropriate training program; or* *(c) had been doing the work of a particular classification for a period of at least 3 months*.
Benefit:	This will simplify the HIGA's classification structure and will ensure employees receive the appropriate renumeration based on the value of the work they perform.

b. **'Liquor service employee'** as presently defined causes confusion for many hospitality employers when considering clause 13.5 of the HIGA and the requirement to pay junior employees working as liquor service employees at the relevant adult rate. The Fair Work Ombudsman has provided their advice to clarify when special rates are payable for juniors working around alcohol.[4] The award definition would be improved with a clarifying note that reflects this advice.

c. **'Rostered day off'** is presently defined as '*a continuous 24-hour period between the end of the last ordinary shift and the start of the next ordinary shift on which an employee is rostered for duty'.* This

[3] The same wording used in the *Clerks – Private Sector Award 2020*.

[4] Fair Work Ombudsman 2023, *Special Rates for juniors working around alcohol*, Australian Government, accessed 4 December 2023,, < https://www.fairwork.gov.au/newsroom/news/special-rates-juniors-working-around-alcohol>

would be more easily understood if re-drafted in plain language to reflect that a rostered day off is a non-working day.

Recommendations:	1. Insert the following Note after the definition of 'liquor service employee' in clause 2 or in clause 13.5: *NOTE: A person who performs the following is a 'liquor service employee' for the purposes of this Award:* o *Sells alcohol to customers in a casino* o *Services alcohol to a seated customer in a restaurant* o *Pours alcoholic drinks for service* o *Takes an order for alcohol from a customer* o *Delivers alcohol (poured by bar staff) to a customer* 2. Amend the definition of 'rostered day off' to say, ***Rostered day off** means a 24-hour period an employee is not required to work (a non-working day). It is distinct from an accrued day off or accrued time off in lieu.*
Benefits:	These amendments will reduce complexity and aid the straightforward understanding of these provisions.

2. **PART TIME EMPLOYEES** (clause 10)

The HIGA's part-time employment provisions are designed to maximise flexibility for both employee and employer, however the existing provisions constrain the intended flexibility in parts. As an example, clauses 10 and 15.2 allow for a permanent part-time employee's guaranteed hours to be averaged across a roster cycle (averaging arrangement) however clause 10.7(b) requires the employee receive two days off each week which is not able to be averaged (i.e. three days off one week and one day off the next week, as part of a two-week averaging arrangement). A better balance can be struck between the part-time safeguards and the flexibility afforded to employee and employer.

Applying the modern award objective in s. 134(1)(g) of the Act, clauses 10.11 and 10.12 of the HIGA can be consolidated and drafted in plain language.

Recommendations:	1. Amend clause 10.7(b) to say, "*must have 2 days off each week, or 4 days off averaged over each 2-week period".* 2. Substitute clauses 10.11 and 10.12 with the following: *10.11* ***Change in employee's circumstances that changes their availability*** *a. If there is a genuine and ongoing change in an employee's circumstances, they may request to alter the times they are available by written request to the employer.* b. *If the employer cannot reasonably accommodate the requested alteration, the previous agreement made under clause 10.4 will cease to apply and a new agreement must be made.*

Benefits:	These amendments provide for improved access to flexibility for part-time employees and will further incentivise employers to engage employees on a part-time, rather than casual, basis.

3. **JUNIORS** (clause 13)

The HIGA provides for two different streams for junior employees ('junior office employees' and 'other than junior office employees'). It is proposed that these two streams can be consolidated, which will be consistent with other provisions in the award which speak to junior employees as a singular, irrespective of their stream (i.e. permissible deductions in Part 7).

Recommendation:	Consolidate the provisions and adopt the junior rates outlined in clause 18.4(a) ('*other than junior office employees'*) as the predominate employment group in the hospitality industry.
Benefits:	Adopting the one set of junior provisions and wage rates reduces the total number of hourly rates of pay for junior workers from 960 to 480 and will simplify the provisions for employees and employers alike.

4. **ORDINARY HOURS OF WORK AND ROSTERING ARRANGEMENTS** (clause 15)

The hours of work provisions in the HIGA are overly prescriptive and limit the flexibility that ought to be provided to both employees and employers when agreeing on a suitable averaging arrangement, subject to the necessary existing safeguards.

Specifically, the AHA's members hold concerns with the limited rostering options for full-time employees in clause 15.1. Whilst a number of averaging arrangements are set out in clause 15.1, the HIGA is silent on the most common of our members' rostering arrangements which is 38 hours worked over one week. The limits of flexibility of rostering full-time employees whose hours are not averaged over periods greater than one week are not conducive to the operational flexibility required for the hospitality industry.

Recommendation:	A proposed variation clause is set out in **Annexure A** to these submissions.
Benefit:	The proposed amendments promote flexible modern work practices and the efficient and productive performance of work in such a way that is beneficial for employees and is more suitable for business. Adopting plain language will ensure these provisions are simpler and easier to understand, without altering the legal effect.

5. **BREAKS** (clause 16)

Clause 16 of the HIGA uses 894 words to set out the provisions for breaks.

In comparison, the *Miscellaneous Award 2020* uses 18 words, stating simply "An employee must not be required to work for more than 5 hours without an unpaid meal break of at least 30 minutes".

Recommendation:	Replace clause 16 with the breaks provision provided in clause 14 of the *Miscellaneous Award 2020,* plus the entitlement to paid rest breaks: *16. **Breaks*** *16.1 An employee must not be required to work for more than 5 hours without an unpaid meal break of at least 30 minutes.* *16.2 Employees are entitled to one 20-minute paid rest break for shifts longer than 8 hours, and two 20-minute paid rest breaks for shifts more than 10 hours.*
Benefit:	This proposal meets the modern award objective to ensure a simple, easy to understand and sustainable modern award system.

6. **MINIMUM RATES** (clause 18)

Clause 18.1 sets out the minimum weekly and hourly rates for adult employees for classifications other than for Managerial Staff (Hotels). Clause 18.2 provides for the minimum annual salary for Managerial Staff (Hotels) but is silent on minimum hourly or weekly rates for this classification level. For clarity and ease of reference, the AHA seeks for this detail that is provided on page 107 of the HIGA[5] to be included within the minimum wage rates in clause 18.2.

Recommendation:	Include the minimum weekly and hourly rate of the Managerial Staff (Hotels) classification in clause 18.2 or to provide this detail by inserting a new line in the table provided in clause 18.1.
Benefit:	This proposal reduces the risk of unintentional wage underpayments caused by incorrect calculations of the minimum annual salary. The amendment benefits employees who will be able to clearly identify the minimum hourly rate within the provisions of clause 18.

7. **APPRENTICE RATES** (clause 19)

Clauses 19.1, 19.2 and 19.4 refer to a 'waiting apprenticeship' however it appears that apprenticeships in waiting are no longer offered in Australia. Provisions that are specific to waiting apprenticeships should be removed from the HIGA, which will also assist in reducing the length of this industrial instrument.

To a similar end, reference to the commencement date of an adult apprentice ('on or after 1 January 2014') can be removed from the HIGA, noting there are no separate and distinct provisions in clause 19.5 which speak to an adult apprentice who commenced prior to 1 January 2014.

Recommendation:	Remove any reference to waiting apprenticeships in the HIGA and delete any associated provisions which speak to a waiting trade, or to the commencement date of an adult apprentice (delete the 'on or after 1 January 2014').
Benefits:	This simplifies the apprentice provisions of this modern award and reduces the complexity of the 150-page instrument. Provisions that are not currently used, and that are not reasonably likely to be used in the foreseeable future, will simplify the modern award for employees and employers.

[5] Schedule B; cl. B5.1 of the HIGA.

8. **HIGHER DUTIES** (clause 22)

The higher duties clause requires redrafting in plain language so that to make clear when higher duties would be payable. The AHA also notes that the duties of an employee within the Food and Beverage attendant grade 2 or grade 3 classification level are sufficiently different to warrant the removal of the limitation on employees receiving payment for higher duties when directed by the employer to perform duties at the grade 3 level (i.e. supervising food and beverage attendants of a lower grade).

Recommendation:	Substitute clause 22 with the following: *22.* ***Higher Duties*** *22.1* *An employee engaged in duties carrying a higher rate than their normal classification for two or more hours on one day must be paid the higher rate for that day. If for less than two hours, the employee must be paid the higher rate for the time so worked.* *22.2* *An employee may be required to temporarily perform the duties of a lower classification without loss of pay.*
Benefit:	Adopting plain language will ensure these provisions are simpler and easier to understand without altering the legal effect. The lifting of the restriction for employees in the food and beverage attendant grades 2 and 3 and their access to higher duties also improves the entitlement for workers.

9. **PAYMENT OF WAGES** (Clause 23)

Clauses 23.1 – 23.5 uses 233 words to set out the provisions for the payment of wages. In comparison, the *Miscellaneous Award 2020* uses 12 words, stating simply 'Payment of wages is dealt with in section 323 of the Act.'

Recommendation:	Replace clauses 23.1 to 23.5 with the provision provided in clause 16.1 of the *Miscellaneous Award 2020*.
Benefit:	Ensures a simpler and easier to understand modern award, without a reduction in entitlement for workers.

10. **ANNUALISED WAGE ARRANGEMENTS** (Clause 24)

The annualised wage provisions of the HIGA and the RIA consistently give rise to concern for the AHA's members, including with respect to their productivity, employment costs and regulatory burden. The increased administrative and regulatory burden associated with compliance obligations have deterred many employers from introducing annualised wages into their workforce, to the detriment of workers who would otherwise be interested in the security an annualised wage provides.

The Fair Work Ombudsman has released an employer's guide to annualised wage arrangements in the hospitality and restaurant industries to aid employers in understanding the 2022 amendments

to the awards.[6] The application of clause 24 could be improved by re-drafting some provisions to align with the guide, and to achieve the modern award objectives in section 134.

Of further note is the 'outer-limits' provisions in clause 24.2(b). These provisions have created an administrative burden where employees who regularly work Saturday and Sunday shifts can work in excess of outer limits where one or more public holidays fall within that roster cycle. Weekends and public holidays are often the busiest periods in the hospitality industry. This can result in full-time employees not being rostered on for the busiest shifts that require the most experienced employees to be working. The AHA proposes an exclusion to the 'outer limits' requirements for public holidays or an extension to the 'outer limits'. Employees are not disadvantaged by this proposal due to the reconciliation requirements of clause 24.3.

If amendments are able to be made to clause 24 to make the provisions easier to use, the AHA submits that it is reasonable for the annualised wage provisions to apply to more than just full-time employees. Part-time employees would benefit from the consistency of every pay period allowing them to anticipate their pay and the protections that prevent disadvantage compared to what they would have earnt if paid on an hourly rate. Extending clause 24 to part-time employees will also assist employers to simplify the wage payment process for its employees.

Recommendations:

1. Introduce annualised wage provisions for part-time employees by clarifying that the agreement made in clause 24.2(a) is an agreement between an employer and a full-time or part-time employee (with emphasis).
2. Substitute the term 'roster cycle' with 'averaging arrangements' in clause 24.
3. Correct the drafting error in cl. 24.2(a) by substituting the reference to 'clause 24.2(a)(vi)' with 'clause 24.2(b)'.
4. Correct the drafting error in cl. 24.2(a)(vi) to read 'clause 35.3(a)'.
5. Regarding the 'outer limits' in clause 24.2(b):
    i. Amend subsection (i) to exclude hours worked between 7.00pm to midnight and hours worked on a public holiday (with emphasis); or in the alternate;
    ii. Extend the outer limits in subsection (i) to be an average of 26 ordinary hours which would attract a penalty rate under clause 29.2(a) of the award per week.
6. Amend cl. 24.2(b)(ii) to read '*an average of 12 overtime hours per week*', removing the superfluous '*in excess of ordinary hours*' which is redundant once you have referred to the hours as overtime hours.
7. Correct the drafting error in cl. 24.2(d)(iii) which refers to cl. 24.2(a)(vi) instead of cl. 24.2(b); to read 'the number of overtime and penalty rate hours that the employee may be required to work without being entitled to additional payment in excess of the annualised wage, in accordance with clause 24.2(b) and (c).'

[6] Fair Work Ombudsman 2023, *An employer's guide to annualised wage arrangements in the hospitality and restaurant industries*, Australian Government, accessed 6 December 2023 < https://www.fairwork.gov.au/sites/default/files/2023-11/fg-employers-guide-to-annualised-wage-arrangements-in-the-hospitality-and-restaurant-industries.pdf>

	8. Add to the end of cl. 24.3(b) (with emphasis) 'within 14 days <u>of completing the reconciliation'</u>. 9. Delete cl. 24.3(c) to reduce an unnecessary administrative task. The *Fair Work Regulations 2009* set out the requirements for pay records that must be kept which will enable employers to complete the reconciliation. Employees have the right to access these records and receive payslips which reflect entitlements paid. 10. If, however, clause 24.3(c) is to remain, insert a Note in cl. 24.3(c) to illustrate modes of compliance acceptable to meet the record keeping requirements. This Note could be developed in conjunction with the Fair Work Ombudsman.
Benefits:	These proposals promote flexible modern work practices, aid in the understanding of the clause for employees and employers alike and reduces unnecessary administrative and regulatory burden on employers. These are modern awards objectives which are not currently being met within the existing provisions.

11. **ALLOWANCES** (clause 26)

a. '**Forklift driver allowance'** in clause 26.3 provides for two separate allowances based on the employment status of the employee (full-time or part-time and casual) and their start date of employment. These provisions should be consolidated in favour of the all-purpose allowance.

b. '**Meal allowance'** in clause 26.4 should be re-drafted in plain language. The obligation on the employer to provide the meal allowance of $15.30 under cl. 26.4(c) should be removed. The option provided in subsection (b) is for the employer to supply a meal, **<u>or</u>** to pay an employee a meal allowance of $15.30 in the circumstances described in that subsection. It is entirely contradictory then for subsection (c) to require an employer to pay the meal allowance *after* and in spite of the fact that they have already provided a meal to the employee. Further, as the employee has received the meal, there is no disadvantage caused by the removal of subsection (c).

c. '**Tool and equipment allowance'** in clause 26.5 provides for an allowance for a cook or apprentice cook (in cl. 26.5(a)) and a required reimbursement for the cost of purchasing tools and equipment (in cl. 26.5(b)) in all other circumstances. It is unclear whether a chef would have an entitlement to the allowance provided in cl. 26.5(a), and the award is silent on entitlements for other workers who may require the use of specific tools in the performance of their duties. The AHA suggests that <u>any employee</u> (not just a chef or apprentice) who is required by the employer to provide and use their own tools in the performance of their usual duties should have access to this allowance in cl. 26.5(a).

d. '**Special clothing allowance'** in clause 26.6 makes specific reference to a 'motel employee' in cl. 26.6(e). 'Motel employee' is not defined in the HIGA and no other provision in the award, other than this one allowance, is constrained to apply to a 'motel employee'. As a motel employee is considered as just an employee for the purpose of the award's coverage, there is no need to explicitly provide coverage of the allowance to motel employees in subsection (e).

e. '**Overnight stay allowance'** in clause 26.15 has caused some confusion for employees who misconstrue the application of this allowance to mean normal overnight work however defined (i.e. night auditor). Clause 25.7 of the *Social, Community, Home Care and Disability Services Industry*

Award 2010 provides for a similar entitlement in the circumstances where an employee is required to sleep overnight at premises to perform a work task outside of their normal hours, called a 'sleepover'. The overnight stay allowance in cl. 26.15 of the HIGA may be better understood by reference to a sleepover in cl. 26.15(a).

Recommendations:	1. Delete clause 26.3(b) in favour of retaining the fork-lift allowance provided in cl. 26.3(a). 2. In clause 26.4, replace the current clause with the following: *26.4* ***Meal Allowance*** *(a) An employer must supply an employee with a meal or pay an employee a meal allowance of $15.30, if the employee is required to work overtime for more than 2 hours without being notified of that requirement on or before the previous day*. 3. In clause 26.5(a), substitute 'cook or apprentice cook' with 'employee'. Delete clause 26.5(b) in favour of the expanded application of cl. 26.5(a). 4. Delete clause 26.6(e). The special clothing allowance in cl. 26.6(c) will apply to all eligible employees, which would include motel employees as employees who are covered by this award. 5. Substitute clause 26.15(a) with '*Clause 26.15 applies to an employee who is requested to sleep overnight on the employer's premises in order to provide prompt assistance to guests outside ordinary business hours'.*
Benefits:	These amendments simplify the allowance provisions in the award and make the provisions easier to use without reducing entitlements for workers.

12. **OVERTIME** (clause 28)

Clause 23 of the *Restaurant Industry Award 2020* speaks to overtime and commences with a Note referring to section 62 of the Act and the factors to be taken into account in determining whether a request for employee to work additional hours are reasonable or unreasonable. Clause 28.1(a) of the HIGA also refers to section 62 however goes on to re-state those factors provided in s. 62. To reduce the length of this Award, clause 28.1 can be removed and replaced with the RIA's Note, also ensuring consistency across these awards.

Recommendation:	Replace clause 28.1 with the following Note also provided in the RIA, *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.*
Benefit:	Reducing the word count of this already very lengthy award simplifies the access to the relevant terms and conditions, and improves consistency for employers who operate across the HIGA and the RIA.

13. **TIME OFF INSTEAD OF PAYMENT FOR OVERTIME** (clause 28.5)

Clause 28.5 requires written agreement between the employer and employee **on each occasion** that an employee will take time off instead of receiving payment for overtime. This is an administrative burden that can be ameliorated by the proposal to allow for the one ongoing written agreement, rather than agreement on each individual occasion.

Recommendation:	Amend clause 28.5 to allow for a written agreement made under clause 28.5(a) to be an ongoing agreement that applies to all overtime worked that can be changed on written notification from the employee to the employer.
Benefit:	This amendment will reduce the unnecessary administrative burden the current provision creates. There is no reduction in entitlement for the employee and the employee retains the ability to cease the arrangement at any time.

14. **LATE NIGHT/EARLY MORNING PENALTY RATES** (clause 29.2)

The wording of '*per hour or part of an hour*' in the late night/early morning penalty payment in clause 29.2 continues to cause confusion for some members who are unclear if the penalty is paid on a pro rata basis for the part of an hour portion.

It is noted that clause 24.4 of the *Registered and Licensed Clubs Award 2020* provides for an equivalent clause with the same monetary value as the HIGA. Bringing the HIGA into line with this Award will simplify payroll functions and will provide consistency across the modern awards.

Recommendation:	Replace clause 29.2 with clause 24.4 of the *Registered and Licensed Clubs Award 2020.*
Benefit:	This amendment will achieve consistency between different modern awards which could apply side by side in a business with multiple venues with cross-coverage.

15. **ADDITIONAL PROVISIONS FOR WORK ON PUBLIC HOLIDAYS** (clause 29.4)

Clause 29.4 speaks to additional provisions for work on public holidays however clause 35 of the HIGA deals substantively with public holidays.

Recommendation:	Co-locate clause 29.4 into clause 35 so that the public holiday provisions are consolidated into the one substantive clause.
Benefits:	This will result in all clauses pertaining to public holiday being in the same section of the Award, making the HIGA easier to use.

16. **ANNUAL LEAVE** (clause 30)

a. **'Shiftworker'** is defined in clause 30.2 as a '*7-day shiftworker regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for 7 days a week'.*

This definition has historically caused confusion for employers, particularly regarding the requirement for the business to operate in the context of a 24/7 shift roster. The question consistently raised is whether it is necessary for the entirety of the business to operate a 24/7 shift

roster or whether a department or section within the business operating a 24/7 shift roster is sufficient to meet this requirement.

The HIGA also forgoes the NES requirement (in s. 87(3) of the Act) for an employee to be regularly rostered to work those shifts, being the shifts which are continuously rostered 24 hours a day for 7 days per week. The AHA submits that consistency in the definition of a shiftworker is in the best interests of comprehension and therefore compliance.

b. Clauses 30.6 – 30.8 speak to excessive leave accruals. These provisions can be consolidated to simplify the direction from an employer to an employee to reduce their accrued annual leave balance, in circumstances where agreement on a leave application has not been reached.

Recommendations:	1. Replace the definition of a shiftworker in clause 30.2 with the NES definition in section 87(3) of the Act. 2. Replace clauses 30.6 – 30.8 with the following: 36. ***Excessive leave accruals*** *a. An employer may direct an employee to take a period of paid annual leave of at least one week provided:* *i. The employee has accrued at least 8 weeks of annual leave; and* *ii. The employer gives the employee 8 weeks' notice of the requirement to take annual leave; and* *iii. The employee retains at least 6 weeks of accrued annual leave after the direction is given by the employer; and* *iv. There is no conflict with any existing leave arrangement agreed by the employee and employer.* *b. An employee may give a written notice to the employer requesting to take one or more periods of paid annual leave if:* *i. The employee has had an excessive leave accrual for more than 6 months; and* *ii. The employee gives the employer 8 weeks' notice of the taking of annual leave; and* *iii. The period of leave is between one- and four-weeks' duration; and* *iv. The employee retains at least 6 weeks of accrued annual leave after the notice is given.* *v. The employer must grant paid annual leave as requested by the notice.*
Benefits:	Simplifies the provisions without reducing an entitlement for employees.

17. **PUBLIC HOLIDAYS** (clause 35)

Clause 35.3 speaks to additional public holiday entitlements for full-time employees.

In the event that an employer elects to pay the employee an extra day's pay pursuant to cl. 35.3(a)(i), confusion arises as to how this extra pay is treated for the purposes of ordinary hours and overtime.

Recommendation:	Insert a subsection (c) at the end of clause 35.3: *(c) The extra day's pay in clause 35.5(a)(i) is paid at the usual rate of pay the employee would have received for working equivalent ordinary hours on a standard working day (usually 7.6 hours). The equivalent hours do not count for the purposes of hours of work, overtime or leave accruals.*
Benefits:	This clarification will assist the parties in understanding the additional public holiday entitlement payable to full-time employees in certain circumstances.

18. **DEDUCTIONS FOR PROVISION OF EMPLOYEE ACCOMODATION AND MEALS** (clause 37)

The AHA notes the amendments made to the Act by *the Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023* (Cth). Consequentially, the modern award provision should be amended to allow for recurring authorised deductions in the permissible circumstances provided by the amending Act.

Clause 37.4 – 37.8 should be consolidated and re-drafted in plain language to provide a simpler and easier to understand deduction process.

Recommendations:	1. Following on from the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023* (Cth), amend clause 37 to allow for recurring authorised salary deductions from 30 December 2023. 2. Consolidate clauses 37.4 and 37.8 into the following: *37.4* ***Deductions for meals only*** *a. An employer may deduct an amount of $9.26 per meal from an employee's wages for providing the employee with a meal if:* *i. The employee does not live in accommodation provided by the employer; and* *ii. The meal is provided during the employee's normal working hours; and* *iii. The employee has authorised the deduction in advance and has consented to the meal being provided.* *b. The adjustment of the amount of the deduction in clause 37.4(a) will be in accordance with the adjustment factor as set out in Schedule C – Summary of Monetary Allowances.*
Benefits:	The use of plain language in the consolidated clause makes these provisions simpler and easier to use.

19. ROSTER CYCLE

"Roster cycle" is used eleven times throughout the HIGA however the term is not defined so its meaning is unclear. 'Roster cycle' is used interchangeably with 'averaging arrangement' at times, causing confusion for users.

For example, clause 15.1 of the HIGA requires full-time employees to agree to one of the averaging arrangements provided in clause 15.1(b). However, when considering the annualised wage provisions in clause 24, subsections (b) and (c) require the consideration of a roster cycle when averaging penalty shifts and overtime hours ('outer limits').

The concern repeats in clause 11.2(b) of the HIGA which provides that a "*casual employee must be engaged to work a maximum of 38 hours per week or, if 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*)". The use of 'roster cycle' in this clause appears to be a reference to the averaging arrangement used (up to a maximum of 4 weeks – e.g. 152 hours over a 4-week period), however it is not clear as the rostering provisions do not apply to casual employees.

Recommendation:	Provide for a definition of averaging arrangement in clause 2 and include clarification that the use of the term 'roster cycle' as a term used interchangeably. Replace the term 'roster cycle' with 'averaging arrangement' in hours of work provisions and in clause 24 – annualised wage arrangements.
Benefit:	These amendments will reduce ambiguity and will promote more consistent practices for provisions that require consideration of an averaging arrangement, rather than a roster cycle.

20. **CLASSIFICATION STRUCTURE AND DEFINITIONS** (schedule A)

The AHA has received feedback from its members that there are considerable restraints in how the classification structure in Schedule A can be used, leading us to the view that the classification structure is no longer fit for purpose. A number of proposals are advanced below to simplify the classification system and to maximise its use.

Recommendations:

- A2.1(b) – remove from F&B grade 2 'including cleaning tables' from the 3rd dot point as this is a duty aligned with grade 1 and causes confusion for employers looking to the appropriate classification level.

- A2.1(c) – amend the 4th dot point ('mixing a range of sophisticated drinks') to say 'mixing a range of sophisticated drinks such as cocktails'. This will assist in the correct classification of employees between grade 2 and grade 3.

- A2.1(d) - remove the 'tradesperson' requirement from grade 4 and reference to 'fine dining room or restaurant'. As an apprenticeship in waiting is no longer offered nationally, the AHA's members find that they are unable to make use of F&B grade 4, rendering this grade redundant. By removing the tradesperson requirement, employers are able to use grade 4 for its employees who perform tasks above that of an F&B grade 3 employee but who aren't yet an appointed supervisor for the purpose of the 'food and beverage supervisor' role in subsection (e). By removing 'fine dining room or restaurant', grade 4 becomes more user friendly.

- A2.2(e) – amend this to say – **Cook grade 2 (wage level 3)** *means an employee who has the appropriate level of training and carries out basic cooking duties such as the cooking of breakfasts and/or snacks, or an employee who has not achieved the appropriate level of training but who carries out a wide range of cooking duties, such as a la carte cooking, baking, pastry cooking or butchering.*

- A2.3(c) – amend this to say – ***Guest Service grade 3 (wage level 3****) means an employee who supervises guest service employees of a lower grade or an employee who has the appropriate level of training and who is engaged in any of the following:*
  - *Providing butler services such as a food, beverage and personalised guest service;*
  - *Carrying out major repairs to linen or clothing including basic tailoring and major alterations and refitting; or*
  - *Dry cleaning.*

- **A2.4 – Administrative stream**

  The definitions for clerical grades 1-3 are contradictory in parts and reflect outdated technology and mechanics no longer operational in 2023 workplaces. An amended classification stream is suggested as follows:

  a. ***Clerical grade 1 (wage level 2)*** *means an employee who is required to perform basic clerical and routine office duties such as filing, collating and copying documents, greeting visitors and delivering messages.*

  b. ***Clerical grade 2 (wage level 3****) means an employee who is engaged in general clerical or office duties such as typing, basic data entry, calculating functions and responding to enquiries.*

	c. ***Clerical grade 3 (wage level 4)*** *means an employee who has the appropriate level of training and who performs any of the following duties:* ○ *Operation of business equipment including telephone equipment, computers, printing devices, Dictaphone equipment and software packages.* ○ *Provide guidance to employees at a lower level.* ○ *Applies a working knowledge of the organisation's structure, products, functions, locations and clients to be able to respond to internal and external enquiries in their own function area; or* ○ *Maintains financial records and journals, collects and prepares time and wage records, makes bookings, prepares accounts queries, does banking.* ○ *Assist with planning events for the business, including booking venue spaces, research and engage with vendors, confer with other areas of the business as needed.* d. ***Clerical supervisor (wage level 5)*** *means an employee who has the appropriate level of training and who coordinates other clerical staff or who coordinates all aspects of an event for a business.* • **A2.8 – Maintenance and trades – other than the cooking trade** The title of 'gardener' provided in A2.8(c) – (f) should be replaced with 'Maintenance Officer'. This is because of the scope of duties assigned to the higher grades of this classification. Employees employed at these higher levels are not employed as gardeners but their duties fall within these classifications, leading to confusion on the part of the employee and employer. Any subsequent reference to supervising 'gardeners at a lower level' should be changed to supervising 'employees at a lower level'. • A2.8(f) – rename this position as **'Maintenance Supervisor (tradesperson) (wage level 5**). • A2.9 – **Managerial staff (Hotels)** – delete from this definition the first paragraph (*for the purpose of this classification, hotels means hotels, resorts etc*). Coverage of this industry award is provided in clause 4 of the Award so there is no need to repeat coverage again in Schedule A. This paragraph does not aid in the understanding of which roles would be designated as Managerial so it should be removed.
Benefits:	These proposed amendments will modernise the classification structure to make it fit for purpose in today's operating context.

RESTAURANT INDUSTRY AWARD 2020

A number of the proposals advanced above in relation to the HIGA are directly applicable to the RIA. Specifically proposals,

- 1 – Definitions.
- 2 – Part-time Employees (applying to clause 10.7(c) of the RIA).

- 5 – Breaks (clause 16 of the RIA).
- 8 – Highter Duties (applying to clause 18.8 of the RIA).
- 9 – Payment of wages (applying to clause 19 of the RIA).
- 10 – Annualised wage arrangements (applying to clause 20 of the RIA).
- 11 – Allowances, specifically,
    - 11(b) – Meal allowance (clause 21.2 of the RIA) and
    - 11(c) - Tool and equipment allowance (clause 21.4 of the RIA)
- 14 – Late night/early morning penalty rates (applying to clause 24.2 of the RIA).
- 15 – Additional provisions for work on public holidays (applying to clause 24.4 of the RIA).
- 16 – Annual leave (applying to clause 25.5-25.7 of the RIA).
- 19 – Roster cycle (used in a similar manner throughout the RIA).

Additionally, the AHA submits the following proposals to make the RIA easier to use.

21. **JUNIOR RATES** (clause 18.2)

    Clause 18.2(b) and (c) require rounding of the weekly rate to the nearest 10 cents for reasons that are not clear, noting there is no equivalent obligation in the HIGA or the GRIA. As payroll functions are completed electronically, the rounding of these rates is no longer necessary and should be removed in favour of a more precise rate of pay.

Recommendation:	Delete clause 18.2(b) and (c) of the RIA and retain the existing minimum rates in subsection (a).
Benefit	This amendment simplifies the rates of pay applying to junior employees and brings the modern award in line with the HIGA and GRIA which may operate alongside the RIA in some businesses.

22. **APPRENTICE RATES** (clauses 18.3, 18.4, 18.5)

    The apprentice rates provided in clauses 18.3 – 18.5 constrain the provisions to apprentices in the cooking trade. Bearing in mind that an apprenticeship may be taken up outside of the cooking trade that ought still to be covered by this Award, the limitation to apprenticeships in the cooking trade should be lifted. The apprentice provisions will then apply to all apprenticeships able to taken up within the coverage of the RIA.

Recommendation:	Remove 'cooking trade' from the apprentice provisions of the RIA, allowing the provisions to apply to all apprenticeships able to be taken up under the coverage of this award.
Benefit:	This amendment will provide much-needed clarification for employers who operate under the RIA and may prompt more apprenticeship opportunities outside of the cooking trade for eligible employees.

23. **ANNUALISED WAGE ARRANGEMENTS** (clause 20)

To bring clause 20 in line with clause 24 of the HIGA, the provisions of the award listed in clause 20.1(a) which are compensated by the annualised wage should be reviewed and adjusted for consistency. This will aid understanding, noting the Fair Work Ombudsman resources on annualised wage arrangements considers clause 24 in the HIGA and clause 20 of the RIA together.

Recommendations:	Amend the provisions of clause 20.1(a) to include: i. Clause 18 – minimum rates; ii. Clause 21 – allowances; iii. Clause 23 – overtime; iv. Clause 24 – penalty rates; v. Clause 25.3 – payment for annual leave loading; and vi. Clause 30.3 – additional public holiday arrangements for full-time employees.
Benefits:	These amendments provide consistency across modern awards and will assist employers whose businesses operate under both the HIGA and the RIA, to maximise the use of annualised wage arrangements, without any detriment to employee entitlements.

24. **SPLIT SHIFT ALLOWANCE** (clause 21.3)

Similar to the immediately preceding proposal, the split shift allowance in the RIA should be replaced with clause 26.14 of the HIGA. The AHA is mindful of the struggle experienced by many of its members who operate businesses under both the RIA and HIGA and who are required to enter multiple payroll rules into their system that speak to the same thing (i.e. split shifts). Consistency in these provisions will ameliorate some of this struggle for businesses.

Recommendation:	Replace clause 21.3 of the RIA with the split shift allowance provided in clause 26.14 of the HIGA.
Benefit:	This consistency across awards will assist employers whose businesses operate under multiple modern awards, whilst continuing to provide additional renumeration for employees working these shifts.

25. CLASSIFICATION STRUCTURE AND DEFINITIONS (schedule A)

Recommendations:	• A2.2(c) – remove 'including cleaning tables' as that duty firmly aligns with the immediately preceding grade and not grade 2. • A2.4 – remove 'tradesperson' requirement from Food and Beverage attendant grade 4 as waiting apprenticeships or similar are no longer offered. At present, this prevents the meaningful use of grade 4. Employers would benefit from being able to use grade 4 for their staff who perform at a higher level than grade 3, but who aren't supervisors for the purpose of grade 5. • Remove Schedule AA from the Award due to its expired period of operation.

Benefit:	The proposed changes to Schedule A are provided with the intention of making the classification structure easier to apply and more fit for purpose for today's operational context.

GENERAL RETAIL INDUSTRY AWARD 2020

26. **PART-TIME EMPLOYMENT** (clause 10)

The GRIA provides flexibility to roster full-time and casual employees across the roster cycle based on the availability of employees and the operational needs of the stores. The current part-time employment provisions limit flexibility and act as a barrier for casual employees to be engaged on a permanent part-time basis, thereby impacting on job security and limiting access to secure work.

As noted in the overarching proposals, the AHA seeks for the flexible part-time provisions provided in clause 10 of the HIGA and the RIA to be inserted into clause 10 of the GRIA. In addition to the benefits noted above, the AHA submits that this increased flexibility will also support gender equality in the workplace by providing workplace conditions that facilitate women's full economic participation, with the flexibility to manage other commitments including caring responsibilities.

Recommendation:	Replace clause 10 of the GRIA with clause 10 from the HIGA.
Benefits:	This amendment goes directly to the modern award objectives set out in section 134 of the Act, including to improve access to secure work across the economy, to promote flexible modern work practices and the efficient and productive performance of work and to provide workplace conditions that facilitate women's full economic participation in the workforce.

27. SALARIES ABSORPTION

The GRIA does not currently provide for a salaries absorption clause applicable to employees within Managerial positions. An equivalent clause is provided in clause 25 of the HIGA.

The AHA seeks for a salaries absorption clause applying to managerial staff to be introduced into the GRIA, to afford the further flexibility to these workers, including to those who are seeking to balance their work with their personal circumstances (e.g. caring responsibilities). Employees will be better off overall, bearing in mind the increased salary payable that is 25% above minimum rates.

Recommendation:	Introduce into the GRIA a salaries absorption clause that is equivalent to clause 25 of the HIGA, to allow for Retail Employee Levels 6-8 to be paid at least 25% above the minimum rates which absorb entitlements for rostering arrangements, overtime and penalty rates. The safeguards for managerial staff to have a minimum of 8 days off duty each 4-week cycle and additional provisions for work performed on public holidays should be continued into this clause.
Benefits:	This proposal will allow managerial employees improved access to flexible work practices to balance work and care.

28. **HOURS OF WORK – Full time employees** (clause 15.6)

The hours of work provisions applying to full-time employees can be re-drafted into plain language and streamlined for clarity and ease of reference, noting that many of its subsections are addressed by other sections of the award.

It is noted that clause 15.6(i) requires, in an establishment at which at least 15 employees are employed per week on a regular basis, the employer to not roster an employee to work ordinary hours on more than 19 days per 4-week cycle unless there is agreement between the employer and the individual employee. This condition is not repeated in the HIGA or the RIA which both permit the rostering of full-time employees across 20 days per 4-week cycle. It is the general expectation of full-time employees that they will work an average of 5 days per week, unless an individual arrangement is otherwise agreed.

It is suggested that the GRIA should allow employers (irrespective of the size of the business) to roster full-time employees across 20 days per 4-week cycle unless the employee makes a written request to perform their full-time hours no more than 19 days per 4 week cycle. Employers may only refuse the request on reasonable business grounds.

Recommendation:	Replace clause 15.6 with the following: ***15.6 Full-time employees*** *a. In each establishment an assessment must be made as to the kind of arrangement for working the average of 38 ordinary hours per week required for full-time employment that best suits the business of the establishment, subject to the following:* *i. Employees must have 2 days off per week, or as averaged across the roster cycle, unless otherwise agreed.* *ii. The maximum number of consecutive days on which the employee may work (whether ordinary hours or reasonable additional hours) is 6.* *iii. Where the hours of work arrangement allow for an accumulated day off per 4-week cycle, the maximum accrual is 5 accumulated days.* b. *An employee may request to perform their full-time hours across no more than 19 days per 4-week cycle. The employer may only refuse the request on reasonable business grounds.*
Benefit:	This proposal will make the provisions of the GRIA easier to use by reducing the administrative burden on employees and employers, without limiting the rights of employees.

29. **ROSTERING ARRANGEMENTS** (clause 15.7)

The rostering provisions of the GRIA should be re-drafted in plain language to reduce length and complexity of the provisions, to make them more user-friendly for employees and employers.

Recommendation:	Replace clauses 15.7-15.9 with the following: ***15.7 Rostering arrangements*** *a. The employer must prepare a roster showing for each employee their name and the times at which they start and finish work.* *b. A roster period should not exceed 4 weeks, except by agreement.* *c. An employee should not be rostered to work ordinary hours on more than 5 days per week, unless an agreement has been reached to work ordinary hours on 6 days in one week and no more than 4 days in the following week.* *d. An employee who regularly works Sundays must receive 3 consecutive days off (including Saturday and Sunday) per 4-week cycle.* *e. The roster may be altered by mutual consent at any time or by amendment of the roster on 7 days' notice.* f. *An employee must have a minimum break of 12 hours between finishing work on one day and starting work on the next. If the employee does not have the requisite 12 hours break, the employee is paid at the rate of 200% until the employee has a break of 12 consecutive hours.*
Benefits:	This proposal will assist in providing a simple, easy to understand and sustainable modern award system that is more consistent with other modern awards (including the HIGA and the RIA). There is no reduction in entitlement for employees.

30. **ALLOWANCES** (clause 19)

The first aid allowance provided in clause 19.10 requires employees with a first aid qualification who is appointed by the employer to perform first aid duty with a weekly allowance of $12.94.

Other modern awards allow for the first aid allowance to be paid as either a weekly or daily rate, depending on the employment status of the appointed first aid officer (full-time or part-time and casual). Given the prevalence of part-time and casual employees in the retail industry, this can inadvertently result in part-time or casual employees not being appointed to such duties or receiving a weekly allowance for a single shift where they are appointed to perform first aid duty. To ensure consistency in modern award provisions, a first aid allowance option for these other employment groups should be introduced into the GRIA.

Recommendation:	Introduce a 'per day' first aid allowance, up to a maximum of $12.94 per week for a part-time or casual employee.
Benefits:	This proposal provides opportunities for part-time and casual employees to be appointed by the employer to perform first aid duty.

31. **BREAKS** (clause 16)

The *Miscellaneous Award 2020* uses 18 words to describe its meal break provisions, stating simply "*An employee must not be required to work for more than 5 hours without an unpaid meal break of at least 30 minutes".* This should be continued over into the GRIA.

Recommendation:	Replace clause 16 with the following: ***16. Breaks*** *16.1 An employee must not be required to work for more than 5 hours without an unpaid meal break of at least 30 minutes and not more than 60 minutes.* *16.2 An employee is entitled to one 10-minute paid rest break for a shift that is between 4 and 7 hours and two 10-minute paid rest breaks for shifts longer than 7 hours.*
Benefits:	This proposal simplifies meal break rules without reducing entitlements for workers.

32. **APPRENTICE RATES** (clause 17.3)

In noting that clause 17.3 sets out the minimum rates for an apprentice who began their apprenticeship *before* 1 January 2014, it is considered that the rates specific to 'pre-January 2014 start' can now be removed from the GRIA.

Recommendation:	Due to the effluxion of time, remove the provisions that speak to an apprenticeship commenced prior to 1 January 2014. The AHA is not aware of any member who currently engages an apprentice who has not completed a 3- or 4-year apprenticeship that was commenced prior to 1 January 2014.
Benefit:	The consolidation of the apprentice rates provisions will make the singular provisions which speak to apprenticeships started after 1 January 2014 (hereafter apprentice rates) easier to read and understand.

33. **OVERTIME** (clause 21)

As clause 21.1 makes reference to section 62 of the Act, clause 21.1(a) and (c) can be removed from the GRIA in favour of the Note provided in the RIA. The payment of overtime provisions can be re-drafted in plain language to simplify payment rules.

Recommendation:	Replace clause 21.1 - 21.2(d) with the following: *21. **Overtime*** *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.* *21.1 **Payment of overtime*** *a. An employer must pay a full-time, part-time and casual employee at the overtime rate for any time worked:* *i. In excess of 38 ordinary hours per week or, if working in accordance with a roster or averaging arrangement, in excess of 38 ordinary hours per week averaged across the averaging arrangement.* *ii. Outside the span of ordinary hours for each day (excluding shiftwork), subject to cl. 15.2;*

	iii. In excess of 11 hours on one day of the week and in excess of 9 days on any other day of the week. *b. Overtime is calculated on a daily basis.* **Note**: cl. 21.2(e) – Overtime rate in the GRIA will move up to subsection (c) to immediately follow the above.
Benefits:	These amendments will simplify the overtime provisions and will promote consistency across modern awards without reducing entitlements for workers.

34. **PERSONAL/CARER'S LEAVE AND COMPASSIONATE LEAVE** (clause 31)

The GRIA's provisions depart from what is provided in other modern awards, including the HIGA and RIA. To reduce the length of the GRIA and to ensure consistency across modern awards, this clause should be amended for consistency across the awards.

Recommendation:	Retain clause 29.1 and delete the remainder of clause 29, to avoid duplication of the NES.
Benefit:	The clause is consistent with other modern awards and does not reduce entitlements.

35. **CLASSIFICATION DEFINITIONS** (Schedule A)

The definitions for the Clerical Assistant stream should be set out in their own section of Schedule A, rather than as it is currently set out under retail employee headings. Equivalent wage rates relative to the corresponding Retail Employee Level can still be established in clause 17.1 (similar to Table 3 – Minimum rates provided in clause 18.1 of the HIGA) however confusion created by having Clerical Officer Level 4 characteristics defined under the description for Retail Employee Level 7 will be reduced.

Recommendation:	Provide for a standalone Clerical Assistant stream in the definitions provided in Schedule A.
Benefit	This will ensure the classification system is easier to understand and implement, without giving rise to inadvertent errors due to misclassification.

Thank you for the opportunity to have made this submission.

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AHA NATIONAL CEO

ANNEXURE A – Ordinary hours of work and rostering arrangements

15. Ordinary hours of work and rostering arrangements

15.1 An arrangement for working ordinary hours must satisfy the following:

a. the minimum number of ordinary hours that may be worked by a full-time employee on any day is 6 (excluding meal breaks); and 3 for a part-time employee; and

b. the maximum number of ordinary hours that may be worked on any day is 11.5 (excluding meal breaks); and

c. the maximum spread of hours for an employee who works split shifts is 12; and

d. no employee is to work more than 10 days in a row without a rostered day off; and

e. an employee must have 8 full days off within a 4-week period.

f. If the averaging arrangement referred to in clause 15.1(a) provides for 160 hours per 4-week period with an accrued day off, the pro-rata amount for credits accrued is 24 minutes pay for each 8-hour day worked. A maximum of 5 days can be banked at any time.

15.2 **Catering in remote locations**

a. Employers who provide catering services to clients in remote locations may agree, with a majority of employees, to schedule work over consecutive recurring cycles followed by consecutive non-working days.

b. The maximum number of ordinary hours that may be worked during a cycle must not exceed 40 multiplied by the number of working and non-working weeks in the cycle.

c. An employer who rosters an employee to work any time in excess of the total number of ordinary hours in an agreed schedule of work under clause 15.2(a) must pay the employee at the overtime rate for any time worked in excess of that total number.

d. Wages may be paid according to the average number of hours per week in a roster cycle instead of the actual number of ordinary hours worked in a particular week of the cycle.

e. An employee is not entitled to payment for non-working days other than accrued rostered days off.

15.4 **Make-up time**

a. The employer and the majority of employees at a workplace may agree to introduce an arrangement at the workplace under which an employee takes time off during the employee's ordinary hours of work and makes up that time later.

b. If make-up time is worked at a time when penalty rates are appliable, the employer must pay the employee in accordance with **Table 14 - Penalty rates** for that time.

15.5 **Rosters**

a. The employer must prepare a roster showing for each full-time and part-time employee their name and the times at which they start and finish work.

b. The roster must be easily accessible by employees, whether this be in a conspicuous place in the workplace or via electronic communication.

c. The roster of an employee may be changed at any time by mutual agreement, including because of sickness or other cause over which the employer has no control, or by the employer giving the employee 7 days' notice of the change.