

**IN THE FAIR WORK COMMISSION**

**Matter No: AM2016/3**

**Section 156 - Four Yearly Review of Modern Awards – *Exposure Drafts –Tranche 2***

**SUBMISSION IN REPLY OF UNITED WORKERS' UNION**

9 December 2019

1. This submission is made pursuant to the Directions of the Fair Work Commission ('the Commission') as outlined in the Decision dated 14 October 2019 ('the Decision').<sup>1</sup> In the Decision, the Commission sets out the process for finalising the technical and redrafting process of modern awards. Interested parties were directed to file any submissions in reply on the exposure drafts in tranche 2 by 9 December 2019.
2. We make the following comments in respect of the tranche 2 awards:

***Cleaning Services Award 2010***

Response to submission of Australian Industry Group (AiG) dated 27 November 2019

3. Clause 2: definitions: minimum hourly rate – We oppose the deletion of the words “*for a full-time employee.*” Whilst Table 2 at clause 15 includes hourly rates, those hourly rates are not applicable to part-time or casual employees. Part-time employees are entitled to a 15% allowance in accordance with clause 10.2 and casual employees are entitled to a loading of 25% in accordance with clause 11.3. Deleting the words “*for a full-time employee*” in the definition of the minimum hourly rate may mislead employers and employees as to the correct payment rates for part-time and casual employees.
4. Clause 4.5(d): coverage –We oppose the amendment proposed by AiG. The current exposure draft does not contain a typo. Clause 4.5(d) appropriately excludes employers of employees in mentioned in clause 4.5(b) and (c). It is not appropriate to exclude employers of employees mentioned in clause 4.5(a); as such employers may also employ employees who *are* covered by the award.
5. Schedule B: Summary of hourly rates: Note - We agree that the Note should be deleted.

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<sup>1</sup> [2019] FWCFB 6861.

## *Hospitality Industry (General) Award 2010*

Response to submission of the AHA dated 27 November 2019

6. Late and early work penalty clauses in the Hospitality and Restaurant Awards – We oppose the amendment the AHA seeks to clause 29.3 of the Hospitality Award and clause 24.3 of the *Restaurant Award 2010* as a result of the review of the *Registered and Licensed Clubs Award 2010*.
7. Clause 24.4 in the Clubs Award was addressed within a conference process between United Voice and Clubs Australia Industrial (CAI) before Commissioner Bissett. The results of that conference process should not be applicable elsewhere.

### *AHA Application to vary a modern award*

8. The AHA has made an application to vary clause 16.2 of the exposure draft of the Hospitality Award (clause 31 of the current Award), to insert the term ‘ordinary’ before ‘hours worked per shift’ in column 1 of Table 2. The changes sought by the AHA are not technical and drafting matters, rather the changes would have a substantive impact on the break entitlements of employees covered by the Award. The substantive review of the Hospitality Award has already been heard.
9. Notably, interested parties were provided with an opportunity to partake in a review of clause 31 of the Hospitality Award as part of the 4 yearly review of the award.<sup>2</sup> The AHA opposed such a review. In the Decision of 6 September 2019<sup>3</sup> it is stated that:

*[22] In the December 2018 Decision we proposed to review clause 31 of the Hospitality Award, as it also deals with breaks.*

*[23] The Australian Hotels Association (AHA) opposed such a review and submitted that the meal breaks clause in the Hospitality Award is different to the meal breaks clause in the Restaurant Award. Further, AHA submitted that the meal break provisions in the Hospitality Award have not been subject to any wide spread industrial dispute<sup>15</sup> and have already been subject to detailed review as part of the Plain Language re-drafting common issue.<sup>16</sup>*

*[24] United Voice did not express a view about the review of the meal break provisions in the Hospitality Award. Given the views expressed by the AHA (and the absence of any view by United Voice) we do not propose to review the meal break provision in the Hospitality Award. Any party seeking to amend this term may make an application to vary the award.*

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<sup>2</sup> [2018] FWCFB 7263, paragraph [249].

<sup>3</sup> [2019] FWCFB 6092.

10. The AHA application is outside of the 4 yearly review of modern awards, and should be dealt with separately from the tranche 2 process. Interested parties should be afforded a proper opportunity to file a submission on this matter.

Response to the submission of ABI dated 27 November 2019

11. Clause 29.3 Penalty rates – We do not oppose the re-drafted clause proposed by ABI.

**United Workers' Union  
9 December 2019**