

From: Victor Song <victor@rca.asn.au>
Sent: Thursday, 18 February 2021 2:08 PM
To: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>
Cc: Nigel Ward <Nigel.Ward@ablawyers.com.au>
Subject: RE: AM2020/103 - Award Flexibility - Restaurant Industry Award 2020

Dear Associate,

I refer to the above matter and to our telephone conversation this morning.

Please find **attached** a PDF version of the amended Draft Determination, which was originally filed with the Commission on Tuesday, 16 February 2021.

Kind regards,



 **VICTOR SONG**
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AMENDED DRAFT DETERMINATION

Fair Work Act 2009

s.157 – Application to vary a modern award to achieve the modern awards objective

Restaurant Industry Award 2020

(AM2020/_____)

PRESIDENT ROSS

XXXXX

XXXXX

_____ 2020

Award Schedule – Renaming of certain classification titles and COVID-19 Pandemic Recovery

Further to the decision [_____] issued by the Full Bench of the Fair Work Commission on _____ 2020, the above award is varied as follows:

1. In the Table of Contents, add a new Schedule R.
2. Add the following Schedule R to the award:

Schedule R - Award flexibility for COVID-19 Pandemic Recovery

R.1 The provisions of Schedule R are aimed at preserving the ongoing viability of businesses and preserving jobs during the COVID-19 pandemic and not to set any precedent in relation to award entitlements after its expiry date. Schedule R operates from XX XXX 2021 until XX XXX 2023. The period of operation can be extended on application to the Fair Work Commission.

R.2 During the operation of Schedule R, the following provisions apply:

R.3 Exemption Rate

- (a) Subject to this clause, an employer and a full time employee may enter into an agreement to pay the employee no less than 150% of their Grade rate each week as set out in clause 18 Minimum Rates of this award (the **Exemption Rate**).
- (b) This clause will only apply to those full time employees paid at the Level 3 rate, or higher who are employed as a:
 - (i) Sommelier;
 - (ii) Restaurant Manager;
 - (iii) Commi Chef (or equivalent);

- (iv) Demi Chef (or equivalent); or
 - (v) Chef de Partie (or equivalent).
- (c) Where an agreement to pay the Exemption Rate has been made, the following clauses of this award shall not apply:
- (i) clauses 16.5 and 16.6 (meal break penalties);
 - (ii) clause 21 (allowances);
 - (iii) clause 23 (overtime rates); and
 - (iv) clause 24 (penalty rates).
- (d) Where an agreement to pay the Exemption Rate has been made, for each hour worked each week by the employee in excess of 45 hours per week, the employee must be paid at the rate of:
- (i) 150% of their ordinary hourly rate for the first two hours in excess of 50 in the week; and then
 - (ii) 200% of their ordinary hourly rate thereafter in the week.

R.4 Classification Structure and Definitions

- (a) Subject to clause R.4 (b) an employer may elect to classify all relevant employees in accordance with the classifications set out in Schedule A2 in substitution for classifying the employee in accordance with Schedule A.
- (c) An employee who is classified in accordance with Schedule A2 shall be paid the minimum rate for the relevant classification in Schedule A2 as set out in the table below in substitution for the minimum rates set out in clause 18 Minimum Rates of the award that would otherwise apply:

Column 1 Employee stream and grade	Column 2 Minimum weekly rate (full-time employee)	Column 3 Minimum hourly rate
	\$	\$
Grade 1 - Restaurant/Café Worker	805.10	21.19
Grade 2 - Restaurant/Café Worker	832.80	21.92
Grade 3 - Restaurant/Café Worker	932.60	24.54

R.5 Industry Allowance

- (a) Subject to this clause:
 - (i) an employer and an employee may enter into an agreement to pay the employee an all-purpose industry allowance of \$XX.XX (the **Industry Allowance**) per XXXX; or
 - (ii) an employer and at least 75% of the employees in the workplace concerned may agree to pay all of the employees in the workplace concerned an all-purpose industry allowance of \$XX.XX (the **Industry Allowance**) per XXXX.
- (b) Where an agreement to pay the Industry Allowance has been made in accordance with clause R.5, the following clauses of this award shall not apply:
 - (i) clauses 16.5 and 16.6 (meal break penalties);
 - (ii) clause 21.2 (meal allowance);
 - (iii) clause 21.3 (split shift allowance);
 - (iv) clause 21.4 (tool and equipment allowance);
 - (v) clause 21.5 (special clothing allowance);
 - (vi) clause 21.6 (distance work allowance); and
 - (vii) clause 24.2 (late night and early morning penalty rates).
- (c) The Industry Allowance shall be paid for all purposes of this award.

R.6 Manner of Application

To avoid any doubt, clauses R.3 to R.5 inclusive operate on the following basis:

- (a) **Exemption Rates (R.3):** individual employer and full time employee agreement;
- (b) **Classification Structure and Definitions (R.4):** employer election to apply to all relevant employees in the workplace; and
- (c) **Industry Allowance (R.5):** individual employer and employee agreement individually, or 75% of the workplace collectively.

R.7 Agreement to be in writing

Where an employer and employee enter into an agreement under clause Schedule R.3 or R.5 it must be:

- (a) in writing;
- (b) signed by the employer and the employee; and
- (c) state the date the agreement commences operation.

R.8 Termination of Agreement

Where an employer and employee enter into an agreement under the clause R.3 or R.5 either party may terminate that agreement by giving the other party no less than four weeks' notice in writing.

R.9 75% agreement to be recorded in writing

Where an employer and 75% of their employees enter into an agreement under clause R.5 it must be recorded:

- (a) in writing;
- (b) signed by at least one of the employees; and
- (c) stating the date the agreement commences operation.

R.10 Consent Arbitration

An employer who enters into an agreement under the provisions of Schedule R provides consent to a dispute being settled by the Fair Work Commission through arbitration in accordance with clause 34. —Dispute resolution and section 739(4) of the Act.

3. Insert Schedule A2 into the award following Schedule A - Classification Structure and Definitions as follows:

Schedule A2—Classification Structure and Definitions

A.1 Restaurant/Café Worker Grade 1

A.1.1 Means an employee who is engaged in any of the following:

- (a) picking up glasses; or
- (b) providing general assistance to food and beverage attendants of a higher classification not including service to customers; or
- (c) removing food plates; or
- (d) setting or wiping down tables; or
- (e) cleaning and tidying associated areas; or
- (f) receiving money; or
- (g) cooking breakfasts and snacks, baking, pastry cooking or butchering; or
- (h) general cleaning duties within a kitchen or food preparation area and scullery, including cleaning cooking and general utensils used in a kitchen and restaurant; or
- (i) assisting employees who are cooking; or
- (j) assembling and preparing ingredients for cooking; or
- (k) general pantry duties.

A.1.2 In addition to the duties set out in A.1.1, means an employee who has not achieved the appropriate level of training and who is engaged in any of the following:

- (a) supplying, dispensing or mixing liquor; or
- (b) assisting in the cellar; or
- (c) undertaking general waiting duties for food or beverages, including cleaning tables; or
- (d) receiving money; or
- (e) attending a snack bar; or
- (f) performing delivery duties; or
- (g) taking reservations and greeting and seating guests.

A.1.3 In addition to the duties set out in A.1.1 and A.1.2, means an employee who has the appropriate level of training, and who is engaged in specialised non-cooking duties in a kitchen or food preparation area.

A.2 Restaurant/Café Worker Grade 2

A.2.1 Means an employee who has the appropriate level of training and is engaged in any of the following:

- (a) supplying, dispensing or mixing liquor; or
- (b) assisting in the cellar; or
- (c) undertaking general waiting duties for both food and liquor, including cleaning tables; or
- (d) receiving money; or
- (e) assisting in the training and supervision of food and beverage attendants of a lower classification; or
- (f) delivery duties; or
- (g) taking reservations and greeting and seating guests; or
- (h) cooking duties such as baking, pastry cooking or butchering.

A.2.2 In addition to the duties set out in A.2.1, means an employee who has the appropriate level of training, including a supervisory course, and who has responsibility for the supervision, training and co-ordination of kitchen attendants of a lower classification.

A.3 Restaurant/Café Worker Grade 3

A.3.1 Means an employee who has the appropriate level of training, which can include a supervisory course, who:

- (a) carries out specialised skilled duties in a fine dining room or a restaurant; or
- (b) has responsibility for the supervision, training and co-ordination of food and beverage staff or for stock control for one or more bars.

Notation: To avoid any doubt an employee classified in one of the classifications set out in this Schedule shall perform all of the duties of the classification as required by the employer.

4. Delete A.3 Kitchen Stream, A.3.1 to A.3.8 inclusive as set out in Schedule A - Classification Structure and Definitions, and inserting in lieu thereof the following:

A.4 Chef stream

A.4.1 Chef grade 1 (tradesperson) means a commi chef or equivalent who has completed an apprenticeship or passed the appropriate trade test or who has the appropriate level of training, and who is engaged in cooking, baking, pastry cooking or butchering duties.

A.4.2 Chef grade 2 (tradesperson) means a demi chef or equivalent who has completed an apprenticeship or passed the appropriate trade test or who has the appropriate level of training and who is engaged to perform general or specialised cooking, butchering, baking or pastry cooking duties or supervises and trains other cooks and kitchen employees.

A.4.3 Chef grade 3 (tradesperson) means a chef de partie or equivalent who has completed an apprenticeship or passed the appropriate trade test or who has the appropriate level of training in cooking, butchering or pastry cooking and who performs any of the following:

- (a) general and specialised duties, including supervision or training of kitchen employees; or
- (b) ordering and stock control; or
- (c) supervising other cooks and kitchen employees in a single kitchen establishment.

5. Delete the words “cook grade 3”, “cook grade 4” and “cook grade 5” in Table 3 of clause 18.1 and insert in lieu thereof “chef grade 1”, “chef grade 2” and “chef grade 3” respectively.

6. This determination comes into effect on _____2020.

PRESIDENT