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**Fair Work Commission: 4 Yearly Review of Modern Awards**

**SUBMISSIONS**

**RESTAURANT INDUSTRY AWARD 2010  
HOSPITALITY INDUSTRY (GENERAL) AWARD 2010  
PLAIN LANGUAGE AWARD SPECIFIC CLAUSES  
(AM2016/15, AM2014/272 & AM2014/284)**

**8 JUNE 2017**

**AUSTRALIAN BUSINESS INDUSTRIAL  
- and -  
THE NSW BUSINESS CHAMBER LTD**

## **1. BACKGROUND**

1.1 These submissions are filed on behalf of Australian Business Industrial (**ABI**) and the NSW Business Chamber Ltd (**NSWBC**) and relate to the plain language Award-specific clauses of:

(a) the *Restaurant Industry Award 2010* (**Restaurant Award**) published on 21 April 2017; and

(b) the *Hospitality Industry (General) Award 2010* (**Hospitality Award**)

(collectively, the **Awards**).

1.2 ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) and has some 4,200 members.

1.3 NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009* (Cth) and has some 18,000 members.

1.4 ABI and NSWBC have a material interest in the Four Yearly Review of the Awards given that both entities represent numerous employers who are covered by the Awards.

1.5 The same numbering as the revised plain language Exposure Drafts has been used throughout these submissions, except where otherwise indicated. Where possible, if the same wording is used in the Exposure Drafts, the clauses have been dealt with together.

## **2. HOSPITALITY AWARD - CLAUSE 2 - DEFINITIONS**

2.1 The definition of “*catering by a restaurant business*” has been removed from clause 2, despite the term still being utilised in the Coverage provisions (subclause 4.4(d)(vi)).

2.2 The definition of “*resort*” has had the words “*and includes an offshore island resort*” removed.

2.3 In the absence of a compelling reason for the removal of these words, our clients submit that they should be reinstated.

## **3. HOSPITALITY AWARD - CLAUSE 9 - FULL TIME EMPLOYMENT**

3.1 The words “*in accordance with an agreed hours of work arrangement*” have been added to this clause, to describe how a full time employee’s ordinary hours are to be worked.

3.2 A number of different arrangements for the working of ordinary hours are permissible under subclause 15.1 of the Hospitality Award, including a range of periods over which the averaging of hours may occur.

3.3 It is not uncommon for an award to refer to an average number of hours to be worked without specifying an averaging period.

3.4 Our clients submit that the insertion of these words do not add clarity to the clause, due to the variability of the arrangements which are permissible, and should be removed. The same submission is not made with respect to the Restaurant Award, into which the words “*over a period of no more than 4 weeks*” have been included at clause 9 to reflect the existing clause 31.1, because this reflects a consistent standard for all full time employees.

**4. BOTH AWARDS - CLAUSE 10 - PART TIME EMPLOYMENT**

4.1 Clause 10.9 in the Restaurant Award and Clause 10.10 in the Hospitality Award both relate to written agreements or variations thereof relating to the pattern of work of part time employees. These subclauses would be better located further up in the ordering of the clause (as new 10.7 and 10.8, respectively).

**5. HOSPITALITY AWARD - SUBCLAUSE 15.1 - FULL TIME EMPLOYEES**

5.1 The drafting of subclause 15.1(c)(vi) and (vii), which apply subclauses 15.1(d) and 15.1(e) to subclause 15.1(b)(v) and (vi) respectively, is cumbersome and unwieldy. Our clients respectfully suggest enquiries be made with the drafter such that these provisions be drafted in accordance with the plain language principles but in a clearer manner.

**6. BOTH AWARDS - CLAUSE 16 - BREAKS**

6.1 Table 2 in clause 16 of the Hospitality Award has omitted the qualifying words from the existing provisions regarding breaks at subclauses 31.1 and 31.2 of the current Award, which has the potential to change the legal effect of the provision.

6.2 Consistent with the language used in clause 16 of the Restaurant Award, our clients propose amending the table as follows:

<b>Column 1</b>	<b>Column 2</b>
<b>Hours worked per shift</b>	<b>Breaks</b>
More than 5 and up to 6	Unpaid meal break of <b>up to</b> 30 minutes
More than 6 and up to 8	Unpaid meal break of <b>at least</b> 30 minutes (to be taken after the first 2 hours of work and within the first 6 hours of work)
More than 8 and up to 10	Unpaid meal break of <b>at least</b> 30 minutes (to

	<p>be taken after the first 2 hours of work and within the first 6 hours of work)</p> <p>One 20 minute paid rest break (may be taken as two 10 minute paid rest breaks</p>
More than 10	<p>Unpaid meal break of <b>at least</b> 30 minutes (to be taken after the first 2 hours of work and within the first 6 hours of work)</p> <p>Two 20 minute paid rest breaks</p>

6.3 Subclause 16.7(c) of the Restaurant Award has included the words *“the employer must seek to ensure the breaks are spread evenly across the shift”*. This is a more onerous obligation than the current subclause 32.6, which provides that *“in rostering for these breaks, the employer must make all reasonable efforts to ensure an even mix of work time and breaks”*. This wording should be inserted into the Exposure Draft.

## 7. RESTAURANT AWARD - CLAUSE 20 - PAYMENT OF WAGES

7.1 The words *“if they so desire”* have been omitted from subclause 20.4. Our clients propose an amendment as follows:

*“An employee paid by cash or cheque who has a rostered day off on a pay day is entitled to be paid on their last day at work before their rostered day off, **if desired.**”*

## 8. BOTH AWARDS - CLAUSES 21 AND 22 - ANNUALISED SALARY ARRANGEMENTS

8.1 Subclauses 21.2 of the Restaurant Award and 22.2 of the Hospitality Award have had the words *“an agreement must be one that is genuinely made without coercion or duress”* added. This is a change to the legal effect of the clause from its current form with respect to both Awards and should be removed.

## 9. HOSPITALITY AWARD - SUBCLAUSE 24.10 - WORKING AWAY FROM USUAL PLACE OF WORK

9.1 Subclause 24.10(c) may need to be considered in the context of sections 151 and 326 of the *Fair Work Act 2009* (Cth) but reserve their position in this regard.

## 10. RESTAURANT AWARD - CLAUSE 25 - PENALTY RATES

10.1 The wording of the heading of Column 3 in Table 6 is confusing. Our clients suggest the same wording as B.2.1 in Schedule B be adopted; that is, *“Introductory to Level 2”*.

**11. RESTAURANT AWARD - SUBCLAUSE 26.2 - ADDITIONAL ANNUAL LEAVE FOR SHIFTWORKERS**

11.1 Our clients agree that the words “7 hours a shift” should be amended to read “7 days a week”.

**12. RESTAURANT AWARD - SCHEDULE A - CLASSIFICATION STRUCTURE AND DEFINITIONS**

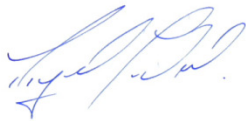
12.1 The reference to “cooks” at A.3.8 (c) has been omitted and should be reinserted.

12.2 The re-ordering of the list of indicative tasks at A.5.3 has lead to the inclusion of (e), (f) and (g) as required tasks, whereas in the current Award B.5.3 these tasks ((g), (h) and (i)) are referred to as ones which the employee “may” perform. Our clients consider that this should be amended to reflect the current Award requirements.

**13. CONCLUSION**

13.1 In providing these comments, ABI and NSWBC seek to properly assist the Commission in the discharge of its discretion pursuant to section 156 of the *Fair Work Act 2009* (Cth).

13.2 If you have any questions in relation to these submissions, please contact Kate Thomson on (02) 4989 1003.



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**On behalf of Australian Business Industrial and the NSW Business Chamber Ltd**