

FAIR WORK COMMISSION

Matter No.: AM2021/58

Application to vary the Restaurant Award for award flexibility

SUBMISSIONS - UNITED WORKERS UNION

Introduction

1. On 9 December 2020 the Federal Minister for Industrial Relations (**the Minister**) wrote to the Fair Work Commission (**FWC**) and asked that a process be undertaken to “ensure several priority modern awards in sectors hardest hit by the pandemic be amended”. In summary, the letter provided as follows:
 - a. It expressed the Government’s view that in the “extraordinary circumstances that have been caused by the COVID pandemic it would be in Australia’s economic best interest for the Fair Work Commission to use its powers under s.157(3)(a) of the *Fair Work Act 2009*” to undertake this process.
 - b. Four “**priority modern awards**” were identified:
 - i. *General Retail Industry Award 2020* (**Retail Award**)
 - ii. *Hospitality Industry (General) Award 2020* (**Hospitality General Award**)
 - iii. *Restaurant Industry Award 2020* (**Restaurant Award**)
 - iv. *Registered and Licensed Clubs Award 2010* (**Clubs Award**)
 - c. With respect to those awards, the Minister said “I have been made aware that potential exists in several awards with a high level of award reliance” and described those as being from “key distressed industry sectors”.
 - d. The potential amendments included:
 - i. potentially simplified pay arrangements in the form of “loaded rates” and / or “exemption rates; and
 - ii. further simplified streamlining of present classification structures, and a broad banding exercise.
2. The Minister’s request was made after, during March 2020 – November 2020, various “working groups” had been convened by the Australian Government involving representatives from employer groups and Unions. One of the working groups was called the “Award Simplification Working Group” and was focused on considering whether, in relation to several awards connected with so called “distressed

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industries”, award simplification could produce efficiencies which might in turn expediate economic recovery from the effects of the COVID-19 pandemic.

3. During the deliberations convened by the Minister in the Award Simplification Working Group, a number of radical proposals were made to make variations to the four priority modern awards. These proposals included exemption rate proposals, loaded rates proposals and classification broad-banding. Some of these proposals would have had the effect of significantly reducing pay for employees covered by the awards and the removal of key award entitlements.
4. UWU participated in good faith in many hours of discussions during the Minister’s working group process. UWU’s consistent position was to oppose any measure that would have had the effect of reducing workers’ take home pay.
5. On 10 December 2020, following the Minister’s request, FWC issued a Statement (**the 10 December Statement**) in which it announced the commencement of a process on its own motion to consider the inclusion of loaded rates, exemption rates and whether any changes could be made to simplify the classification structures in the priority modern awards (**the award review process**).
6. The 10 December 2020 Statement referenced an earlier Statement issued by the President on 31 August 2020 about “The Fair Work Commission’s Coronavirus (COVID-19) update – Draft Award Flexibility Schedule”. This Statement had in turn referenced the Reserve Bank of Australia’s observation that the COVID-19 pandemic represents “the largest shock to the global economy in many decades”.
7. The 10 December 2020 Statement provided that the award review process would commence with a conference of interested parties to occur.
8. Accordingly, the award review process which gave rise to the application that is the subject of these submissions occurred against a backdrop and in the context of the Australian Government’s response to what many considered at the time to be an extraordinary set of economic circumstances.
9. UWU immediately acknowledged the significance of the impact of the pandemic on the economy and the hospitality industry in particular. Through the process convened by FWC in response to the Minister’s request, UWU has participated in many hours of discussion in conferences convened by the Commission and in separate meetings about the priority modern awards. In these discussions UWU has taken a constructive approach to that dialogue, albeit on the basis that UWU does not support and will oppose any measure which would mean workers covered by the awards would suffer detriment or be worse off than under the awards’ present arrangements.

The application

10. On 23 April 2021 Restaurant and Catering Industrial (**RCI**) filed an application pursuant to section 157 of the *Fair Work Act 2009* seeking variations be made to the Restaurant Award (**the application**). The variations sought by the application are captured in an amended draft determination filed by RCI on 2 June 2021 (and attached to the FWC Statement of 3 June 2021) (**the amended draft**

determination). The variations sought by the amended draft determination are as follows.

11. The **classification proposal**:

- a. A proposal to “broadband” part of the classification structure in the Restaurant Award.

12. The **allowance proposal**:

- a. A proposal for inclusion of a clause in the Restaurant Award to allow an agreement to be made between an employer and an employee to aggregate some allowances into an all purpose allowance.

13. The **exemption rate proposal**:

- a. A proposal for inclusion of a clause in the Restaurant Award to allow an agreement to be made between an employer and certain employees to pay the employee an exemption rate equal to 170% of the relevant minimum rate in lieu of a number of entitlements (only with respect to a limited class of employees at the top end of the classification structure).

The state of the industry

14. The impact of the pandemic on the sector of the hospitality industry covered by the Restaurant Award was significant, but the industry is recovering.

15. When the Minister asked the Commission to commence a process to review the Restaurant Award and when the Commission commenced that process of its own motion, the economic circumstances facing the hospitality industry were significantly more acute than they are now.

16. In *Annual Wage Review 2020-21*¹ (**the Annual Wage Review 2020-21 decision**), FWC made findings in relation to the economy as a whole and findings in relation to the hospitality industry. FWC’s findings in relation to the economy as a whole are relevant to the state of the hospitality industry, because the industry is part of the economy and the trajectory of the economy is likely to align with the trajectory of the industry. The findings included:

- a. “The Australian economy has recovered to a greater extent and more quickly than anticipated”².
- b. “In his Budget speech, the Treasurer described the economic environment thus: ‘Australia’s economic engine is roaring back to life’”³.
- c. “In line with expectations of strong demand for labour throughout 2021, job vacancies as a proportion of the labour force are at historically high levels, at over 2 per cent ... Furthermore, job vacancies are high across a broad range

¹ [2021] FWC FB 3500

² *Ibid* at [24]

³ *Ibid* at [38]

of industries, even in those industries with employment levels below their pre-pandemic levels. In addition, the ratio of unemployed people to vacancies reached its lowest level in over a decade in March 2021⁴.

- d. “WPI declined to an annual growth of 1.4 per cent for two consecutive quarters in the second half of 2020. The ABS explained that economic uncertainty, fewer wage reviews and the staggered implementation of the 2019–20 Review decision have all contributed to the historically low rate.”⁵
- e. “There was a broad consensus in the submissions before us that the current performance of the economy has exceeded expectations and that the economic recovery was well underway. We acknowledge and have taken into account that the impact of the pandemic and the extent of the recovery has varied between and within industry sectors.”⁶
- f. That the Restaurant Award was mapped to the accommodation and food services industry and that “Professor Borland recommends that the Accommodation and food services sector remain in the ‘lagging recovery’ (upper cluster).”⁷
- g. “The expected pattern of future lockdowns is likely to adversely impact ... accommodation and hospitality businesses (other than those providing take away food services) ...”⁸

17. In the Annual Wage Review 2020-21 decision FWC decided an increase to award minimum wages was appropriate. However, FWC was satisfied that exceptional circumstances exist such that the date of the increase in relation to the Restaurant Award should not occur on 1 July 2021, but should be delayed to occur on 1 November 2021.

18. In its 2019-20 Annual Wage Review decision⁹ the majority of the Expert Panel also decided not to implement an increase to minimum wages in the Restaurant Award until a delayed date of 1 February 2021.

19. This means the date of the increase to minimum wages in the Restaurant Award was delayed by six months in 2020, and by three months in 2021.

20. A Statement was filed together with these Submissions made by Associate Professor Angela Knox from the University of Sydney Business School. The Statement contains a report prepared by Professor Knox in relation the hospitality industry (**the Knox Report**). The report was commissioned by UUU in relation to the priority modern awards and FWC review process generally, and not specifically in relation to this application. FWC can and should take general regard of the report, taking into account the fact that it was not prepared specifically in relation to this application.

⁴ *Ibid* at [94]

⁵ *Ibid* at [108]

⁶ *Ibid* at [172]

⁷ *Ibid* at [255]

⁸ *Ibid* at [247]

⁹ *Annual Wage Review 2019-20 [2020] FWCFB 3500*

21. The Knox report says:

“While the onset of the COVID crisis and its effects have been significant, both here and abroad, Australia’s economy appears to be bouncing back at aggregate level (Borland 2021). Within Australia’s hospitality industry, similar trends are apparent, although slightly more tempered.”

22. Accordingly, with respect to this application, the Commission should take the view that:

- a. the circumstances facing the sector of the industry covered by the Restaurant Award are different than they were at the time of the Minister’s Letter and at the time the Commission commenced the process to review the Restaurant Award; and
- b. the hospitality industry is not facing as acute an economic crisis as may have appeared to exist at the time of the Minister’s Letter and at the time the Commission commenced the process to review the Restaurant Award; and
- c. while the speed and circumstances of the economic recovery in the hospitality industry is inferior to that of some other industries (and was categorized by Professor Borland as “lagging”), the hospitality industry *is recovering* from the economic effects of the pandemic.

23. In support of the application, RCI filed witness statements made by several employers operating within the scope of the Restaurant Award. A number of these employers assert they are presently finding it difficult to engage staff and that a higher headline rate of pay might assist in attracting and retaining staff – by implication, that income levels are at least one of the factors associated with the problem these businesses are experiencing in filling staff vacancies.

- a. Witnesses who said they were having trouble attracting staff included Zac Mina from the Gambaro Group (at [14]); Lee Green from Canning River Café (at [9] and [10]); Mark Holmes from Gran Pacific Group (at [10]); Sarah Hooper from La Vida Restaurant (at [14], [16], [17]); Jeremy Courmadias from Fink (at [9], [1 (sic)]); Craig Squire from Ochre Restaurant and Catering (at [11]); Andrew Zaniewski of Ramen Danbo Australia (at [9]), Vincenzo Salvatore of Lucas Group (at [11] – [13]); Ben Cummings of Sydney Restaurant Group (at [8], [2 (sic)]); Sunshine Dyer of American Bourbon Bar and Grill (at [8] – [9]); Tim Johnson of Corbett and Claude Pty Ltd (at [10]).
- b. Witnesses who said that a higher headline rate of pay might assist in attracting and retaining staff included Mark Holmes from Gran Pacific Group (at [15]); Sarah Hooper from La Vida Restaurant (at [17], [26]); Jeremy Courmadias from Fink (at [12 (sic)]); Vincenzo Salvatore of Lucas Group (at [21]); Tim Johnson of Corbett and Claude Pty Ltd (at [10]).

24. In her report, Professor Knox says:

- a. *“Further degradation of wages and/or career progression opportunities is likely to heighten recruitment and retention problems and exacerbate labour shortages, proving counterproductive for hospitality businesses. Instead, evidence indicates that efforts should be directed towards increasing the quality of hospitality jobs, including pay and professional opportunities, to increase productivity, stimulate economic growth and spur competitiveness.”*

The approach to this application: caution should be exercised.

25. On the basis of its submissions made in relation to the present state of the hospitality industry, and generally speaking with regard to this application, UWU submits that the proper approach is a cautious one, in particular taking into account the following matters.
26. *Firstly* the environment within which this application is made is no longer extreme or unusual, and, to the extent FWC has in the past eighteen months approached applications to vary modern awards having regard to the “unique” circumstances of the pandemic¹⁰, it should not take that approach in this matter.
27. *Secondly* FWC should adopt an approach which ensures that none of the measures sought by the application would involve a reduction in take-home pay with respect to any worker covered by the award. Reductions in take home pay would not assist this industry to continue to recover from the economic effect of the pandemic – in fact, any such measure would be counter-productive, and contribute to the specific challenge facing the industry at present – attracting and retaining staff.
28. If any of the variations sought by the application would involve a reduction in take-home pay for any worker covered by the award, they should not be made. In the present environment, and taking into account the matters referred to in these submissions above, such variations, if they would have the effect of reducing take-home pay for workers covered by the award are inconsistent with the modern awards objective. In this regard UWU notes further:
 - a. a variation which might have the effect of a reduction in take-home pay is not justified, taking into account relative living standards and the needs of the low paid (section 134(1)(a));
 - b. a variation which might have the effect of a reduction in take-home pay will not promote social inclusion through increased workforce participation (section 134(1)(d));
 - c. a variation which might have the effect of a reduction in take-home pay will likely have a negative impact on business, including on productivity (section 134(1)(f));
 - d. a variation which might have the effect of a reduction in take-home pay will likely have a negative impact on employment growth, inflation and the

¹⁰ *Australian Hotels Association and United Workers’ Union* [2020] FWCFB 1574 at [52]

sustainability, performance and competitiveness of the national economy (section 134(1)(h)).

The classification proposal

29. The application proposes a variation to the award which would provide for the “broad banding” of elements of the classification structure as follows:

- a. The proposal relates to the food and beverage and kitchen streams presently set out in the Restaurant award at Schedule A – Classification Structure and Definitions. The food and beverage stream has in effect five “grades” (or four grades and a supervisor grade). The kitchen stream also has five grades (three trade-qualified chefs and two junior kitchen grades). Each grade has “definitions” which describe the relevant role. Each “grade” is mapped to a “level” for the purposes of the minimum rate that applies.
- b. The proposal “merges” the grade one and two food and beverage classification and the grade one and two kitchen classification. It also combines the four role definitions into one, and describes the new role as “Restaurant Café Worker Grade 1”. The pay rate attaching to this new role is the current “Level 2” pay rate.
- c. The proposal also merges the grade three food and beverage classification, and the grade three kitchen classification. It also combines the two role definitions into one, and describes the new role as “Restaurant Café Worker Grade 2”. The pay rate attaching to this new role is the current “Level 3” pay rate.
- d. The proposal also merges the grade four food and beverage classification and the grade five food and beverage classification. It also combines these two role definitions and describes the new role as “Restaurant Café Worker Grade 3”. The pay rate attaching to this new role is the current “Level 5” pay rate.
- e. The proposal removes the kitchen grades associated with trade qualified chefs into a separate stream called “chef stream”. The role definitions and pay rates with respect to these roles are preserved.
- f. As a result, an employee within these streams covered by the award presently being paid at “Level 1” would be paid at the Level 2 pay rate.
- g. An employee within these streams by covered by the award presently being paid at “Level 2” would be paid at the Level 2 pay rate.
- h. An employee within these streams covered by the award presently being paid at “Level 3” would be paid at the Level 3 pay rate.
- i. An employee within these streams covered by the award presently being paid at “Level 4” would be paid at the Level 5 pay rate (excepting the Level 4 trade qualified chef would remain at the Level 4 pay rate).

- j. An employee within these streams covered by the award presently being paid at “Level 5” would be paid at the Level 5 pay rate.
- k. An employee within these streams covered by the award presently being paid at “Level 6” would be paid at the Level 6 rate.

30. It appears that this variation would:

- a. not result in a reduction of take home pay for any employee provided employees are classified correctly, in accordance with the new classification structure; and
- b. would result in an increase in take home pay for some workers who are classified in accordance with the new structure.

31. UWU members have identified at least two specific concerns with this proposal:

- a. the combination of multiple classifications results in a requirement that employees “multi-skill” in order to perform those roles (see RCI Submissions at [31]). The effect of multi-skilling may be such that the combination and variation of multiple skill sets results in an increase in the work-value associated with the work.
- b. the increase of the level 4 rate to the level 5 rate might operate as a disincentive to promote employees from level 3. Workers might get “stuck” at level 3 whereas ordinarily they might be more likely to be promoted, at least to level 4.

32. UWU notes that at [40] of the Statement, FWC has expressed a provisional view in favor of making this proposed variation to the Restaurant Award.

33. At [41] of its the Statement, FWC expresses a provisional view that if the Restaurant Award is varied in the manner sought by the application, the provisions should operate for an initial period of 12 months, and a review will occur prior to the end of that period.

34. If FWC is minded to grant the variation sought, the concerns identified by UWU justify the adoption of further protective measures as follows:

- a. A committee should be formed to monitor the operation of this and any other variation FWC is minded to make in relation to this application. The committee should comprise at least two representatives nominated by RCI, and two nominated by UWU (and such additional representatives as these two parties may agree to). The Committee should meet bi-monthly and consider matters relevant to whether this proposal (and others contemplated by this application) are working fairly, efficiently and appropriately. The formation of this committee need not be a clause of the award, but FWC should recommend that it be constituted and function along the lines suggested in any decision it makes about this matter.

- b. The review in relation to the operation of this variation to the Award (and others, if any) should commence no later than nine months after the commencement of its operation. The review should consider, among other things, whether the concerns identified by UWU members and outlined at [31] of this Outline of Submissions have come to fruition.

The allowance proposal

35. R5 of the amended draft determination proposed a variation to the Award as follows:

- a. An employer and an employee could enter into an agreement to pay the employee a “substitute allowance”.
- b. Alternatively an employer and at least 75% of the employees in a workplace could agree that all of the employees in the workplace be paid a “substitute allowance”.
- c. An agreement so made would mean the following allowances under the award would not apply:
 - i. clauses 16.5 and 16.6 (meal break);
 - 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).
- d. The substitute allowance is payable for all purposes of the award.
- e. The allowance is set at an hourly rate ranging from \$1.60 per hour for lower classification levels, to \$1.08 per hour for the highest classification level (with different rates specified for each classification level).

36. For some employees, the adoption of this allowance would result in a pay increase because it would be paid for all purposes and in all circumstances, including in circumstances where under the award, allowances in lieu of which it is paid might not have applied to a particular employee. The extent to which a person paid this allowance might be better off under the current regime (and thus disadvantaged by the proposal) is difficult to predict. We note the value of the allowance for a full-time employee could be as much as \$60.80 per week (or more if overtime hours are worked).

37. UWU notes further that:

- a. This arrangement can only occur by an agreement made between the employee and the employer, or alternatively, by agreement between the employer and at least 75% of a workplace.
- b. An agreement once made could be terminated by either party with the provision of four weeks notice by an employee, or by at least 50% of the employees in a workplace plus one employee.

- c. An agreement must be in writing, signed by the employer and the employee and state the date the agreement commences operation.
- d. Prior to initiating this measure the employer must consult with the employee(s) affected and their representative (including by providing information about the proposal and inviting the employee and their representative to give their views about the impact of the proposed change) and must consider any views given.
- e. An employer who enters into such an agreement gives consent to a dispute being settled by FWC through arbitration. FWC's dispute resolution powers include powers to:
 - i. Terminate an agreement made if it is determined it was not entered into genuinely
 - ii. Terminate an agreement made if it is determined there was a failure to consult
 - iii. require an employer to pay an employee the difference between what they were paid the agreement and what they would otherwise have received under this award if it is determined that any agreement entered into under this Schedule was unfair for an employee

38. Despite these protections, UWU members have identified the following concerns with this proposal:

- a. Much of the case in favor of this provision made by RCI is that it will improve compliance with the award. Enhanced compliance with the award may well be a factor in favor of its adoption, in the context of the modern awards objective. However, a case in favor of a proposed award variation based solely on improving compliance with the award may not be enough. UWU does not concede that the frequent non-compliance with this award justifies its amendment solely on that basis. FWC should not make this variation to the award unless it is persuaded that it is consistent with the modern awards objective for reasons in addition to the reason that it might improve compliance.
- b. It is important that an employee who enters into an agreement that will aggregate allowances in the manner contemplated by this provision can withdraw from that agreement for any reason, including when they discover they would be better off receiving individual allowances under the award. It is therefore appropriate that this measure include a provision allowing parties to withdraw from any agreement by providing at least four weeks notice (as is proposed). However, the hospitality industry is afflicted by significant level of award non-compliance. It is therefore crucial that employees are *informed* of their right to withdraw from an agreement to aggregate allowances and their right to do is respected.
- c. Item R.11 of the amended draft determination provides that FWC may arbitrate a dispute which arises under this (and other) proposals, and in

arbitrating such as dispute, may, among other things, “require an employer to pay an employee the difference between what they were paid under this Schedule and what they would otherwise have received under this award if the Fair Work Commission determines that any agreement entered into under this Schedule was an unfair for an employee”. In other words, the proposed clause appears to be intended to empower the FWC to order an employer to rectify any financial disadvantage that may arise for an employee who is paid the substitute allowance, who can show they would have been better off not receiving the substitute allowance, and instead receiving individual allowances under the award. This should be clear – that is – the power of FWC to require payment of a financial disadvantage suffered as a result of the adoption of the substitute allowance should be clarified.

39. UWU notes that at [40] of the Statement, FWC has expressed a provisional view in favor of this proposal.

40. If FWC is minded to grant the variation sought, the concerns identified by UWU justify the adoption of further protective measures which should include:

- a. The additional protective measures outlined above in [34] should be adopted.
- b. For the reasons mentioned above, if the variation is to be made, it should be varied as follows:

“R.7 ... Agreement must be in writing, and specify in writing that either party can withdraw from the agreement by providing notice of four weeks. An agreement that does not contain this is not valid.”

- c. For the reasons mentioned above, if the variation is to be made, it should be varied as follows:

“R.11 (b) (iii) ... require an employer to pay an employee the difference between what they were paid under this Schedule and what they would otherwise have received under this award if the Fair Work Commission determines that any agreement entered into under this Schedule was an unfair for an employee (including in circumstances where it is shown that an employee would have earned more if an agreement to be paid the substitute allowance did not exist and the employee had been paid individual allowances under the award)”

The exemption rate proposal

41. Item R.3 of the draft determination would have the following effect:

- a. An employer and an employee could enter into an agreement to pay the employee no less than 170% of their relevant Level rate.
- b. Such an agreement could only be made with a full time employee.

- c. Such an agreement could only be made with an employee paid at the Level 5 or Level 6 rate of the Award (excepting employees classified under the administrative and general stream).
 - d. An agreement so made would mean the following clauses of the Award would not apply:
 - i. clauses 16.5 and 16.6 (meal break);
 - ii. clause 21 (allowances);
 - iii. clause 23 (overtime rates) but not clause 23.2; and
 - iv. clause 24 (penalty rates).
 - e. However, the employee *would* be entitled to be paid overtime rates if they work in excess of 57 hours in a week.
42. The following types of employees covered by the Restaurant Award would come within the scope of this proposal as envisaged by the draft determination:
- a. Food and beverage supervisor.
 - b. Cook grade 4 (also known as a “demi chef”).
 - c. Cook grade 5 (also known as a “chef de partie”).
43. It appears RCI assert that the only circumstances in which an employee covered by the Award who is paid under this exemption rate arrangement could be worse off (compared with their entitlements under the current Award) is if they work more than 57 hours in a week. However in order to deal with this, the proposal provides for overtime rates to begin to be paid if an employee who has made such an agreement works for more than 57 hours in a week.
44. UWW notes further that:
- a. This arrangement can only occur by an agreement made between the employee and the employer.
 - b. An agreement once made could be terminated by either party with the provision of four weeks notice.
 - c. An agreement must be in writing, signed by the employer and the employee and state the date the agreement commences operation.
 - d. Prior to initiating this measure the employer must consult with the employee affected and their representative (including by providing information about the proposal and inviting the employee and their representative to give their views about the impact of the proposed change) and must consider any views given.

- e. An employer who enters into such an agreement gives consent to a dispute being settled by FWC through arbitration. FWC's dispute resolution powers include powers to:
 - i. Terminate an agreement made if it is determined it was not entered into genuinely
 - ii. Terminate an agreement made if it is determined there was a failure to consult
 - iii. require an employer to pay an employee the difference between what they were paid the agreement and what they would otherwise have received under this award if it is determined that any agreement entered into under this Schedule was unfair for an employee

45. UWU notes further that:

- a. Clause 25 of the HIGA provides that various provisions of the award shall not apply to employees within the managerial staff (hotels) classification level who are receiving a salary of 125% of the minimum annual rates for the appropriate classification. These provisions include penalty rates, overtime, allowances and leave loading.
- b. Clause 18.4 of the RLC Award provides that subject to the provisions of the NES, various provisions of the award shall not apply to a *club manager* who is receiving a salary of 20% in excess of the minimum annual rates for the appropriate classification. These provisions include penalty rates and overtime.

46. At the commencement of the FWC process, FWC commissioned a [report](#) from the FWC research section which compiled a brief history of the use of "exemption rates" in awards. The paper referred to the decision of the Full Bench of the Australian Industrial Relations Commission in *Clerks – Private Sector Award 2010*¹¹ (**the Clerks Decision**). The *Clerks Decision* involved the consideration and application of the then Minister's Award Modernisation Request in which she said:

"The request now reflects more clearly the Government's intention that the creation of modern awards should not exempt, or have the effect of exempting from the safety net provided by modern awards, employees other than those expressly listed in the request. Employees who are not high income employees should be protected by a complete and comprehensive modern award safety net of basic entitlements unless there is a history of exempting employees from coverage across a wide range of prereform awards and NAPSAs in the relevant industry or occupation..."

47. In other words, at least in respect of the Award Modernisation Request, the Minister's view appeared to be that the proper role of exemption rates in awards is limited only to those employees covered by the award who might be described as "high income".

¹¹ [2009] AIRCFB 922

48. This view has some alignment with the approach taken by FWC and its predecessors in relation to its treatment of exemption rates in awards. For example, in the *Clerks Decision* the Full Bench referred to the comments of Munro J in *Alcoa of Australia Ltd v Federated Clerks Union of Australia*¹² who said:

“The notion of an exemption rate as the point of demarcation between a subordinate employee and a staff or managerial level employee seems most compatible with the evidence and history of the provision in the awards and their antecedents. Moreover, such an approach is also consistent with the rationale of some exemption clauses which have been the subject of arbitral discussion in this Commission. That rationale is consistent also with the exemption rate being treated as the practical boundary to FCU negotiations for overaward payments.”

49. The exemption rate proposed by the draft determination may go further in its application than “high income” employees or “managers”. It seeks that the exemption rate apply both to the highest grade within the food and beverage stream of the award (the “food and beverage supervisor”), and the highest grade within the Kitchen stream (the “cook grade 5” or “chef de partie”) and the second highest grade within the Kitchen stream – the cook grade 4 or “demi chef”. And while each of these classifications envisage supervisory duty, none are described as “managers”.

50. UWU members have identified several concerns with this proposal:

- a. The proposal may extend the operation of the exemption rate concept beyond its proper confines, in a manner inconsistent with the traditional approach taken by the FWC and its predecessors to limit the application of exemption rates only to managers, or high income employees, or where a historical tradition of exemption applies.
- b. Employers who attempt to activate this proposal will have to be careful to honor contractual obligations they have in place with employees – for example – in relation to extant “over-award” entitlements. For example, in a Statement filed by RCI in support of the application, Jeremy Courmadias from Fink Restaurant says:

“We employ a range of senior staff, both in back and front of hours positions whose salary puts them well above the current award rates. We would immediately seek to introduce exemption rates into our business for roughly 30 employees.” (Courmadias Statement at [9]),

- c. UWU does not suggest Courmadias has indicated or intends that his business may dishonor the above award arrangements he refers to. But his evidence demonstrates circumstances in which employers may seek to implement the exemption rate proposal – where extant above award contractual entitlements already apply. And UWU submits employers should be cautioned by FWC to ensure any such conduct occurs in a manner which is consistent with those contractual obligations.

¹² [1990] AIRC 163 (28 February 1990)

- d. While the proposal is apparently designed to promote compliance, it might inadvertently encourage it:
 - i. A common cause of non-compliance is the failure to properly pay each individual entitlement in the Award; to instead pay an aggregate rate (in breach of the Award) or an annualized salary, but fail to adhere to its requirements¹³.
 - ii. This proposal expands the circumstances in which an employer is permitted to pay an employee an aggregate rate of pay, instead of the complete safety net of basic modern award entitlements.
 - iii. By introducing such an exemption, there may be a danger some employers may believe, incorrectly, that the circumstances in which they are entitled to pay an aggregate rate, which are proposed to expand, are to expand beyond the Level 4 and into more junior levels in the classification structure.
- e. The submissions made above at paragraph [37(c)] in relation to the allowance proposal are similarly relevant to the exemption rates proposal.
- f. The proposal embodies a scenario in which employees might work more than 57 hours in a week. While RCI submits that this scenario is “rare” the very reference to a scenario in which an employee might work more than 57 hours in a week, or indeed the possibility that such a scenario might somehow be legitimized by a specific provision in an award, is cause for some concern.

51. UWU notes that at 40 of the Statement, FWC has expressed a provisional view in favor of this proposal.

52. If FWC is minded to grant the variation sought, the concerns identified by UWU justify the adoption of further protective measures which should include:

- a. FWC should consider amending the draft determination to prevent the making of an exemption rate agreement in relation to the Grade 4 cook – the “demi chef” (who is the second highest classification in the cooks stream). This would mean the provision is limited only to the two highest classifications in the Kitchen and food and beverage streams respectively. This would allow an understanding to be formed about the application of the concept in practice and if appropriate, further application could be made to expand the application of the concept to the Grade 4 cook if warranted and after an appropriate period of time.
- b. The suggestion made in relation to the allowance proposal outlined above at [39(c)] should be adopted.
- c. The suggestion made in relation to the allowance proposal outlined above at [39(d)] should be adopted.

¹³ See *Annualised Wage Arrangements* [2018] FWCFB 154 at [120]

- d. With respect to the concern we raise at paragraph [50(f)], at the least, it is appropriate that the “note” appearing beneath clause 30 of the Restaurants Award, which is a reference to section 62 of the Act (which deals with unreasonable overtime) should be repeated below clause R.3(c) of the proposed variation.

United Workers Union

29 June 2021

FAIR WORK COMMISSION

Matter No.: AM2021/58

Application to vary the Restaurant Award for award flexibility

WITNESS STATEMENT – ANGELA KNOX

I, ANGELA KNOX, Associate Professor, C/- The University of Sydney Business School, 3 Paramatta Road, Camperdown, in the State of NSW say:

1. I make this statement from my own knowledge, except where indicated. Where I make a statement about matters on the basis of information provided to me, I identify the source of that knowledge and believe it to be true.

My qualifications


2. I am an Associate Professor of Work and Organisational Studies at the University of Sydney Business School.
3. I hold a Ph.D. from the University of Melbourne.
4. My areas of expertise include precarious work, job quality, skills and employment regulation in the service sector. My research has been published in the international journals, including: *Human Relations*, *Work, Employment and Society*, *International Journal of Human Resource Management*, *Human Resource Management Journal*, *Gender, Work and Organisation* and *Journal of Industrial Relations* and I am the co-editor of a book on *Job Quality in Australia*, published by Federation Press an Editor of *Work, Employment and Society* and on the Editorial Board of *Human Relations*.

My report

5. In or about February 2021 the United Workers Union (**UWU**) asked me to conduct an examination into the hospitality industry, particularly focusing on existing literature about the industry's workforce. In a discussion with representatives from UWU, I was alerted to a process involving the review of several hospitality modern awards, about which there is publicly available information including on the Fair Work Commission web-site. I was told that the review was considering reforms such as classification broad-banding and the adjustment of the operation of industry penalty rates to create "loaded rates". Attached to this Statement and marked "**AK-1**" is a copy of the Project Agreement I made with UWU.

Lodged by: United Workers Union	Telephone:	(03) 9235 7777
Address for Service: 833 Bourke Street, DOCKLANDS VIC 3008	Fax:	(03) 9235 7770
	Email:	Ben.redford@unitedworkers.or.au


6. I wrote a report about these matters. Attached to this Statement and marked "AK-2" is a copy of that report.



Witness Name (printed)

ANGELA KNOX

Date: 29/6/21

 <p>THE UNIVERSITY OF SYDNEY</p>	<h2>Commissioned Research Project Agreement</h2>
<h3>Parties</h3>	
University of Sydney	The University of Sydney , a body corporate under the <i>University of Sydney Act 1989</i> (NSW), ABN 15 211 513 464, as described in more detail in Part A of Schedule 1.
Organisation	United Workers Union , ABN: 52 728 088 684, as described in more detail in Part B of Schedule 1.
<h3>Date</h3>	
Effective Date	The Effective Date of this agreement is the date upon which the last party signs this agreement.
<h3>Details</h3>	
Research Services (clause 1.1)	<p>Project Title: <i>Award Flexibility in 'Distressed' Industries (Hospitality Industry) impacted by COVID-19</i></p> <p>The Services to be Provided:</p> <p>The Research Services involve an expert report entailing a literature review on the potential outcomes associated with the Federal Government's proposed changes to awards in 'distressed industries', specifically regarding their impact on the hospitality industry and its workforce. The research will examine how the proposed changes might impact pay and career paths in the industry – especially in relation to the potential introduction of 'loaded rates' of pay and altered classification structures. Provision of invited expert evidence to the Fair Work Commission in a public hearing is also probable.</p> <p>as described in the Research Plan in Schedule 2.</p>
Research Services Period (clause 1.2)	Period during which the Research Services will be undertaken: From: 10 February 2021 to 31 March 2021
Term	This agreement commences on the Effective Date and terminates at the completion of the Research Services Period.
Research Purpose (clause 1.1)	The report and associated expert evidence provided to the Fair Work Commission will inform the Commission's Decision regarding Award Flexibility within the 'distressed' hospitality industry.

Deliverables (clause 1.2)	A final written project report will be provided to the Union on project completion. Provision of expert evidence at the Fair Work Commission, as required.
Specified Personnel and Students (clauses 1 and 6)	The Project Leader and the following staff and any replacement of such personnel as appointed from time to time. The University of Sydney: Angela Knox Organisation: Natalie Dabarera Student involvement: No
Project Leader	Associate Professor Angela Knox, Sydney Business School Email: angela.knox@sydney.edu.au , and includes any replacement of the Project Leader as appointed from time to time.
Ethics/Biosafety approval required (clause 1.5)	All approvals required by: Not applicable.
Special Terms	
This agreement is subject to the following special terms: Not applicable.	
Note: Unless indicated otherwise, all capitalised terms in column 1 of the Details have the meaning given in column 2.	
EXECUTED as an agreement.	

SIGNED for and on behalf of **THE UNIVERSITY OF SYDNEY** by its duly authorised representative:

.....
Signature

.....
Printed Name

.....
Position

.....
Date

Note: By executing this agreement each signatory represents that he or she is authorised to sign on behalf of their entity. The effective date of this agreement will be the Effective Date specified in the Details or if no Effective Date is specified in the Details the date on which the agreement has been executed by ALL the parties.

SIGNED for and on behalf of **the ORGANISATION** by its duly authorised representative:

..... Signature Signature
..... Printed Name Printed Name
..... Position Position
..... Date Date

Note: By executing this agreement each signatory represents that he or she is authorised to sign on behalf of their entity. The effective date of this agreement will be the Effective Date specified in the Details or if no Effective Date is specified in the Details the date on which the agreement has been executed by ALL the parties.

General Terms

1 Research Services

1.1 Provide Research Services

The University will provide the Research Services on the terms of this agreement and with a view to achieving the Research Purpose.

1.2 Milestones and Deliverables

The University will use reasonable endeavours to provide the Research Services and Deliverables within the Research Services Period and in accordance with any Milestones.

1.3 Uncertainty of Research

The Organisation agrees that due to the inherently uncertain nature of research, the actual outcomes and results of the Research Services cannot be assured. The University will not be liable to the Organisation for any loss or damage arising by reason of its failure to perform work on time or within estimated costs or at all, provided that the University has used its reasonable endeavours in all respects in carrying out the Research Services.

1.4 University Personnel

The Research Services will be carried out by the University Personnel. If for any reason any of the University Personnel become unavailable, clause 11.8 (Force Majeure) applies and the University will use reasonable endeavours to secure a replacement acceptable to the Organisation. If no acceptable replacement is available or the parties cannot agree an acceptable replacement within 30 days, either party may terminate this agreement with immediate effect by notice to the other party.

1.5 Ethics/Biosafety Approval

If the Research Services require approval by the University's Ethics and/or Biosafety Committees (or equivalent), the University will use reasonable endeavours to obtain that approval. In the meantime, the University's obligations to perform the Research Services are suspended. If approval is not obtained, or not obtained by the later of the date set out in the Details by which Ethics approval is required or 60 days after the effective date of this agreement, either party may terminate this agreement with immediate effect by notice to the other party.

1.6 Records

The University will maintain reasonable records regarding the conduct and conclusions of the Research Services.

1.7 Additional services

The University will obtain written permission from the Organisation before carrying out additional work to the Research Services or incurring additional costs other than as agreed with the Organisation as part of the Fees.

2 Organisation's obligations

The Organisation agrees to:

- (a) cooperate with the University during the provision of the Research Services;
- (b) provide the University with the Organisation Materials and the right to use the Organisation Materials and any other assistance, information, data, equipment, resources or materials as may be reasonably required by the University;
- (c) notify the University of any unusual risks or dangers in Organisation Materials that the Organisation is aware of;
- (d) comply with all safety, security and other procedures notified to it by the University while on any University site if it attend the University sites; and
- (e) not to solicit for the purposes of employment the Specified Personnel during the term of this agreement **and** for 6 months following expiry of the agreement.

3 Fees

3.1 Invoices

The University will invoice the Organisation the Fees as set out in the Schedule 1. The invoice will be in the form of a tax invoice.

3.2 Payment terms

The Organisation agrees to pay the University the Fees within 30 days of receiving an invoice. Any amount in Fees which is not paid within 30 days will attract interest applied at the Bank Bill Swap Reference Rate for 90 days as published in the Australian Financial Review on the day interest is claimed.

3.3 Expenses

The Organisation agrees to pay the University for expenses reasonably incurred by the University in providing the Research Services which are set out as part of the Fees or otherwise approved by the Organisation.

3.4 GST

If a supply under this agreement is subject to GST and GST has not been accounted for in determining the consideration payable for the supply, the

supplying party may recover from the receiving party an amount on account of GST. That amount is:

- (a) equal to the value of the supply calculated in accordance with GST law multiplied by the prevailing GST rate; and
- (b) payable at the same time as the recipient is required to pay for the related supply.

3.5 In-kind contributions

If GST is payable on any in-kind contribution by the Organisation:

- (a) the University will issue a recipient created tax invoice (“**RCTI**”) to the Organisation for the GST inclusive value of the in-kind contribution within 28 days of the supply being made;
- (b) the University warrants that it complies with the necessary legal requirements for issue of RCTIs; and
- (c) the Organisation agrees not to issue an invoice for their in-kind contributions.

4 Intellectual Property Rights

4.1 Deliverables

On payment of all Fees, the University’s IPRs and other rights, title and interests in the Deliverables are hereby assigned to the Organisation. The University does not warrant that IPRs in the Deliverables are valid, suitable for patenting or do not infringe the IPRs of third parties.

4.2 Licence back

The Organisation grants a free, non-exclusive and perpetual licence (together with the right to sub-licence) to the University to use the Deliverables for the purpose of research, education and publication provided that the University complies with its obligations in clause 5 (Confidentiality).

4.3 Ownership of other IPRs

The parties agree that, other than the Deliverables, all IPRs arising from the Research Services (“**Project IPRs**”) are the sole property of the University which may deal with them as it deems fit. However, the University may offer a licence to the Organisation of any such Project IPRs on terms to be agreed.

4.4 Organisation Materials

The Organisation grants a non-transferable, non-exclusive licence to the University for the Research Services Period to use the Organisation Materials for the sole purpose of providing the Research Services. The Organisation warrants that it is entitled to provide the Organisation Materials in accordance with this agreement and indemnifies the University against any damages, liabilities, loss or costs arising

from any claim made against the University contrary to this warranty or based on a claim that the Organisation Materials infringe any IPRs of third parties.

4.5 University Background IPRs

IPRs which the University owns or uses for the purpose of providing the Research Services (“**University Background IPRs**”) remain with the University and no assignment or licence to the Organisation is to be implied by the use of the University Background IPRs in providing the Research Services.

5 Confidentiality

5.1 Use of Confidential Information

Unless a party obtains the prior written approval of the other party to disclose Confidential Information, each party must:

- (a) maintain the secrecy of the other’s Confidential Information;
- (b) not use the other’s Confidential Information except as required for the performance of this agreement;
- (c) not disclose the other’s Confidential Information to any other person other than employees or advisers who need to know it in order to perform that party’s obligations under this agreement (“**Representatives**”); and
- (d) use reasonable endeavours to ensure that its Representatives comply with sub-clauses **Error! Reference source not found.**(a), (b) and (c).

5.2 Required by law

Each party may disclose the other’s Confidential Information if required by law but, if possible, it must inform the other party first and use reasonable endeavours to limit the terms of that disclosure as reasonably requested.

5.3 University’s publication rights

The University may publish material relating to the conduct and conclusions of the Research Services, including the Deliverables, provided that prior to publishing any such material the University will:

- (a) provide a copy of all proposed publication material, together with details of how, when and to whom it is proposed to be published, for the approval of the Organisation at least 30 days prior to the proposed submission date for publication (“**Approval Period**”), such approval only to be withheld in accordance with sub-clause 5.3(b); and

- (b) if, during the Approval Period, the Organisation reasonably requests that the material not be published or submitted for publication in the form provided, the University will:
- (i) where the Organisation requests that the material be amended to remove any of their Confidential Information, use all reasonable efforts to amend the proposed publication material to remove all such Confidential Information in which case the Organisation will be deemed to have approved publication or submission of the amended material by the University; and
 - (ii) if requested, delay publication of the material or submission of the material for publication for a period not exceeding 30 days.

If the Organisation withholds approval or requests changes under this clause it must provide reasons. The Organisation will be deemed to have approved the publication or submission of material under this clause if the Organisation does not communicate to the University its decision regarding approval of the publication, with reasons if applicable, within the Approval Period.

5.4 Association approval

Neither party will use the other party's name or the name of any employee, including any University Personnel, in any public manner whatsoever including in any capital raising, business, advertising or other promotional material without the permission of the other party, which may be granted subject to conditions.

6 Students

6.1 Student involvement

The Organisation agrees that Students may be involved in carrying out the Research Services. The University agrees to ensure that its Students who participate in the Research Services are supervised by appropriate staff and subject to any of its internal policies applicable to Students.

6.2 Ownership of Student thesis copyright

The parties agree that ownership of the copyright in any thesis authored by a Student who participates in the Research Services remains with that Student.

6.3 Student IPRs

Before a Student carries out any part of the Research Services, the University will ensure that the Student has:

- (a) assigned any of their rights in the Project IPRs (including the Deliverables) (other than copyright in their thesis) to the University;
- (b) granted a royalty free, unrestricted perpetual licence (including a right to sub-license) to the University to use the copyright in their thesis as it deems fit; and
- (c) agreed to comply with the process in clause 5.3 (Publication rights) prior to publishing any thesis including material relating to the conduct and conclusions of the Research Services.

6.4 Confidentiality

If required, the University agrees to ensure that each of its Students participating in the Research Services and any external examiner appointed to review a thesis of such a Student have signed a confidentiality agreement with the University complying with clause 5 (Confidentiality) before they are granted access to the Organisation's Confidential Information relating to the Research Services.

6.5 Content of Student thesis

Notwithstanding any other provision of this agreement the parties agree that a Student participating in the Research Services may include material relating to the conduct and conclusion of the Research Services in a thesis authored by the Student, which will be made publicly available in accordance with the University's statutes and regulations.

7 Warranties and liability

7.1 Due care and skill

The University warrants that the Research Services will be performed with due care and skill and in a professional manner consistent with generally accepted research and academic practice.

7.2 Breach of warranty

For breach of the warranty in clause 7.1 (Due care and skill), the Organisation's exclusive remedy, and the University's entire liability, will be, if permitted by law, limited (at the University's option) to reperformance of the Research Services or limited to the amount equivalent to the Fees paid by the Organisation under this agreement .

7.3 Implied warranties

Except as stated in clause 7.1 (Due care and skill) and subject to clause **Error! Reference source not**

found. (Statutory terms), the University excludes all implied terms, representations and warranties whether statutory or otherwise, relating to the subject matter of this agreement.

7.4 Statutory terms

The University acknowledges that if, under applicable State, Territory or Commonwealth law, the Organisation is a consumer:

- (a) certain warranties or conditions may be implied in this agreement; or
- (b) certain guarantees may be conferred on the Organisation and certain rights may be conferred on the Organisation,

which cannot be excluded, restricted or modified. If so, and if that law applies to the University, then to the maximum extent permitted by law, the University's liability is limited, at the University's option, to resupply of the relevant Services or the payment of the cost of resupplying the relevant Services.

7.5 Liability limit

Subject to clause **Error! Reference source not found.** (Statutory terms), the University's total liability to the Organisation for loss or damage of any kind, however caused, due to the University's negligence, breach of contract, breach of any law, in equity, under indemnities or otherwise, arising from or in any way related to this agreement or the Research Services is limited to the amount equivalent to the Fees paid by the Organisation under this agreement.

7.6 Consequential loss

Subject to clause 7.4 (Statutory terms), the University is not liable to the Organisation for consequential or incidental damages (including loss of profits, revenue, goodwill or opportunities) in contract, tort, under any statute or otherwise (including negligence) arising from or in any way related to this agreement or the Research Services.

7.7 Contributory negligence

Each party's liability under this agreement is reduced to the extent that any damages, liability, loss or costs arise from or are attributable to, any negligent act or omission of the other party or its officers, employees, agents or contractors.

8 Termination

8.1 Mutual agreement

This agreement may be terminated at any time by written agreement of the parties.

8.2 Termination for breach

Either party may terminate this agreement by written notice to the other party if the other party breaches a term of this agreement and fails to remedy the breach within 30 days after receiving notice requiring it to do so.

8.3 Insolvency

The University may terminate this agreement by written notice to the Organisation if the Organisation has entered into any form of insolvency, liquidation or external administration, whether voluntary or involuntary, formal or otherwise.

8.4 Consequences

If this agreement is terminated for any reason, then:

- (a) both parties will return all property in their possession belonging to the other party, including Confidential Information;
- (b) the Organisation must pay the University all Fees owing to the University at termination within 14 days of termination; and
- (c) the Organisation will compensate the University for any irrevocable commitments entered by the University as part of the Research Services prior to the University receiving a termination notice from the Organisation to the extent that they were reasonable commitments made with the prior knowledge of the Organisation.

8.5 No prejudice

Termination of this agreement is without prejudice to the rights of the terminating party to obtain damages for any breach of this agreement.

8.6 Survival

Clauses on (Fees), clause 4 (Intellectual Property Rights), 5 (Confidentiality), 6 (Students), 7 (Warranties and liability), 8.34 (Consequences of termination), and 9 (Disputes) survive the termination of this agreement for any reason.

9 Disputes

Any dispute relating to this agreement ("**Dispute**") must, prior to a party initiating litigation (other than for equitable or interlocutory relief), be dealt with as follows:

- (a) the affected party will notify the other party with details of the Dispute ("**Dispute**")

- Notice”**) and, within 7 days of receiving the Dispute Notice, the parties will negotiate and attempt to resolve the Dispute;
- (b) if unresolved within 30 days of the Dispute Notice, the Project Officers of each relevant party, or another nominated member of senior management (the “**Nominated Person**”) will negotiate and attempt to resolve the dispute;
 - (c) if unresolved within 30 days of the commencement of the negotiations between the Nominated Persons, any of the affected parties may refer the Dispute to mediation;
 - (d) if the parties cannot agree on a mediator within a further 14 days, the Dispute will be referred by the parties to the President, Australian Commercial Disputes Centre, Sydney to nominate a suitably qualified mediator and the parties will accept that nomination;
 - (e) the parties will cooperate to enable the mediator to mediate the Dispute within 30 days of the mediator’s appointment; and
 - (f) the fees of the mediator will be paid by the parties in equal proportions.

10 Communication

10.1 Requirements for valid notice

Any notice or other formal communication under this agreement:

- (a) must be in writing and signed by the Project Officer of the sender or an authorised representative of them;
- (b) must be marked to the attention of the recipient’s Project Officer and be delivered to the recipient by hand, pre-paid post or fax at the address or number shown in Schedule 1 (or as last notified); and
- (c) will be effective once received, and will be deemed to be received, if posted in Australia, on the seventh day or, if faxed, at the time shown on the transmission report for the complete message being sent.

10.2 Authorised persons

The parties agree that any notice or other formal communications which do not comply with clause 10.1 (Requirements for valid notice) will be of no effect. Each party agrees that it will not rely on representations or promises made by any other persons associated with a party, including the Specified Personnel, other than those made by that party’s Project Officer or an authorised representative of them and agrees that representations and promises made by any other person do not bind that other party.

11 General

11.1 Terms and entire agreement

This agreement consists of these General Terms, the Details, the Special Terms and any annexures or schedules expressly incorporated and it constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

11.2 Inconsistency

If there is an inconsistency between a provision of the Special Terms, these General Terms, the Details and a schedule (including any attachments), then the first-mentioned terms prevail.

11.3 No representations or warranties

Each party acknowledges that in entering into this agreement they have not relied on any representations or warranties about its subject matter except as expressly provided by this agreement.

11.4 Variation and waiver

A provision of this agreement or a right created under it may not be waived or varied except in writing, signed by all the parties. A failure or delay in exercise of a right arising from a breach of this agreement does not constitute a waiver of that right.

11.5 Further assurances

Each party agrees to execute such agreements, deeds and documents and do or cause to be executed or done all such acts and things as may be reasonably necessary to give effect to this agreement, including assisting to facilitate any application to register IPRs, confirming any rights granted in relation to the IPRs, and assisting with any GST requirements.

11.6 No exclusivity

Subject to the parties at all times observing their respective obligations under this agreement, each party acknowledges that the Organisation is not acquiring the Research Services on an exclusive basis and this agreement will not preclude each party engaging in activities similar to or in competition with the Research Services or its subject matter.

11.7 No agency or partnership

Nothing contained or implied in this agreement is intended to create a partnership between the parties or, except as otherwise provided in this agreement, establish any party as an agent or representative of the other party. Except as otherwise provided in this agreement, no party has any authority to bind the other party, or to act for, or to incur any obligation or assume any responsibility on behalf of, the other party in any way.

11.8 Force Majeure

No party is liable for any breach of its obligations under this agreement to the extent that the breach resulted from a Force Majeure Event provided that it:

- (a) promptly notifies the other party (with appropriate details); and
- (b) takes all reasonable steps to work around or reduce the effects of the Force Majeure Event.

If a Force Majeure Event continues for more than 30 days or continues beyond the Research Services Period, either party may terminate this agreement with immediate effect by notice to the other party.

11.9 Remedies cumulative

Except as otherwise provided in this agreement, the rights, powers and remedies provided in this agreement are in addition to and not exclusive of the rights, powers and remedies given by law independently of this agreement.

11.10 Indemnities

The indemnities in this agreement are continuing obligations, independent from the other obligations of a party under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

11.11 Governing law

This agreement is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

11.12 Counterparts

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

11.13 General interpretation

Unless the contrary intention appears, in this agreement:

- (a) references to statutes, regulations, policies, rules or code include references to those statutes, regulations, policies, rules or codes as amended, updated or replaced from time to time;
- (b) references to the singular includes the plural and vice versa;
- (c) references to person or individuals include a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency;
- (d) the words “include” and “including” are not used as, nor are they to be interpreted as, words of limitation;
- (e) headings are for convenience only and do not affect interpretation;

- (f) reference to a party means a party to this agreement and includes the party’s executors, administrators, successors and permitted assigns;
- (g) references to dollars is to Australian dollars, unless otherwise stated;
- (h) a provision of this agreement will not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the agreement or the inclusion of the provision in the agreement;
- (i) if an act must be done on a specified day which is not a business day, it must be done instead on the next business day; and
- (j) where consent or approval is to be provided under the terms of this agreement, that consent or approval must not be withheld unreasonably.

12 Definitions

The following words have these meanings in this agreement:

Background IPRs means all IPRs developed outside the Research Services whether before or after the Effective Date of this agreement which are owned by a party and are contributed to the Research Services by that party for the purpose of carrying out the Research Services.

Confidential Information of a party means all information or data that is disclosed by or obtained from that party for the purposes of this agreement or the Research Services before, on or after the Effective Date of this agreement relating to the operations, business, research and technology of the disclosing party excluding information which is:

- (a) publicly available or subsequently becomes publicly available other than in a breach of this agreement;
- (b) lawfully known to the other party on a non-confidential basis before being disclosed by the party that owned the confidential information;
- (c) rightly acquired from a third party who is not in breach of an agreement to keep such information confidential; or
- (d) developed independently by a party.

Deliverables are defined in the Details.

Fees means the financial contributions set out in Schedule 1.

Force Majeure Event means any event which is outside the reasonable control of the affected party and could not have been prevented by that party taking all reasonable steps.

Individual Contributions means the respective individual contributions of each party set out in Schedule 1.

Individual Project Obligations means the respective individual project obligations of each party set out in Schedule 1.

In-kind Contributions means the in-kind contributions set out in Schedule 1.

IPRs means all registered and unregistered rights in relation to present and future copyright, trade marks, designs, know-how, patents, confidential information and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

Organisation Materials comprises NA.

Project IPRs is defined in clause 4.3

Registrable IPRs means Project IPRs which are capable of being registered.

Reports means the reports set out in Schedule 1.

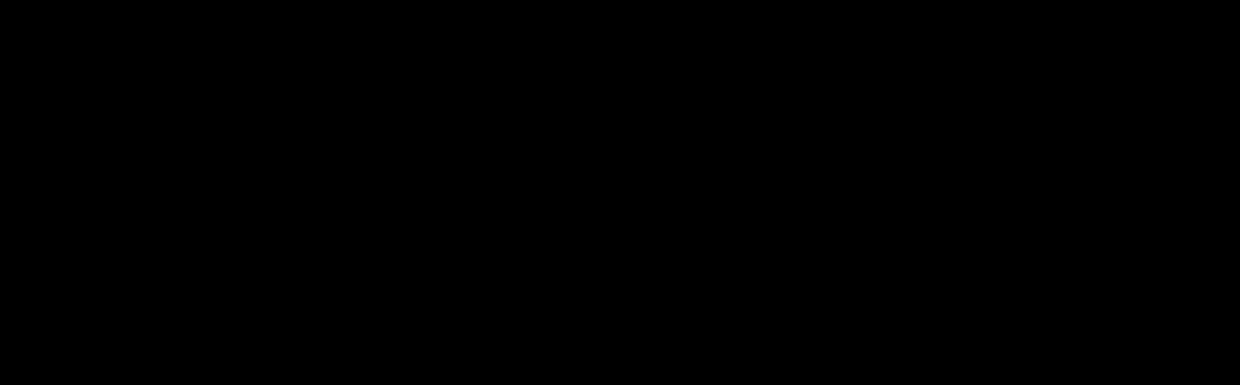
Student means a person admitted as a student with a party that is a university under the rules and policies of that university.

University Personnel means any Specified Personnel listed in the Details who are University employees or affiliates when performing the Research Services.

Schedule 1 - Project and party details

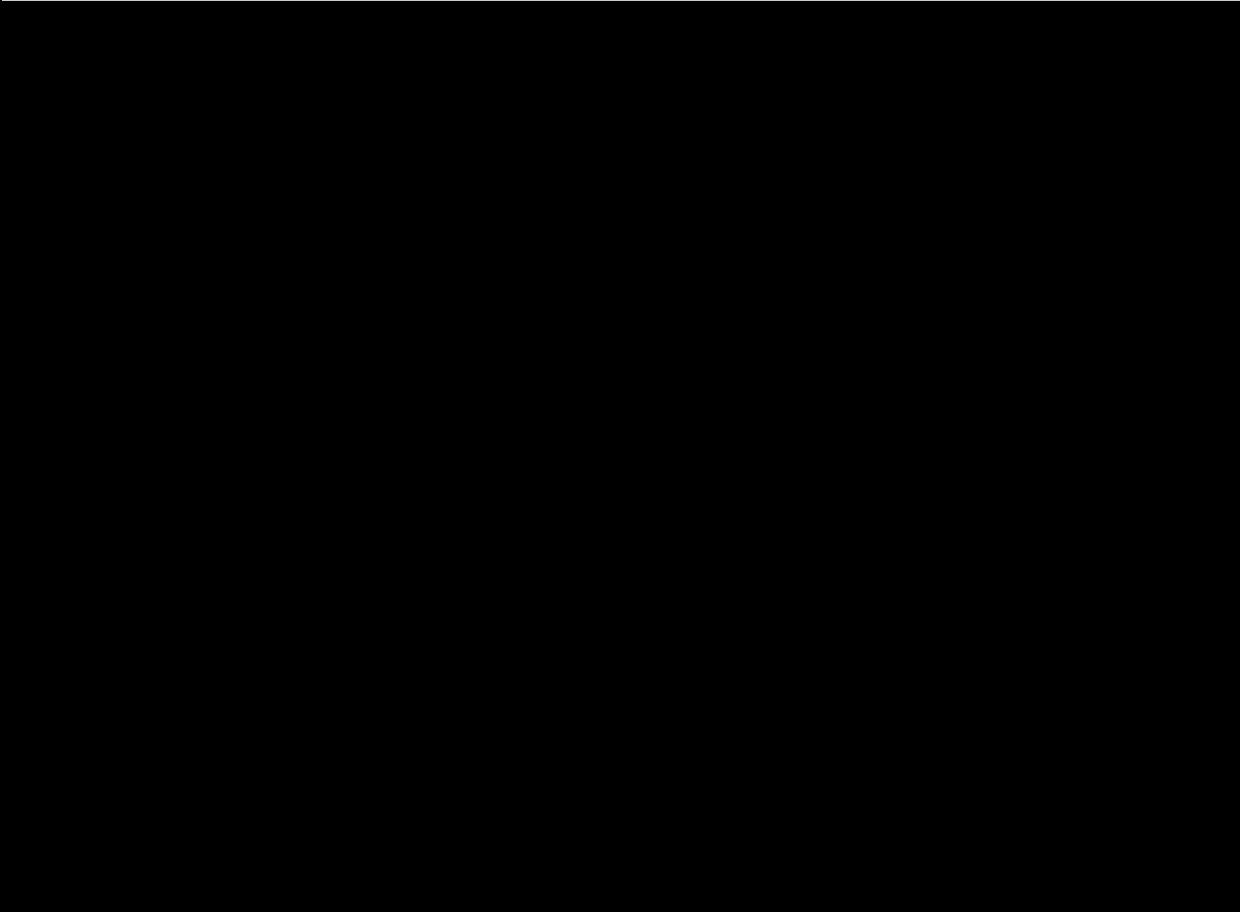
Part A: University of Sydney

Note: All capitalised terms in column 1 of the following tables have the meaning given in column 2.

The University	
The University of Sydney	The University of Sydney , a body corporate under the <i>University of Sydney Act 1989</i> (NSW), ABN: 15 211 513 464, c/o Research Operations, Office of the Deputy Vice-Chancellor (Research), Level 3 Administration Building (F23), The University of Sydney, NSW 2006 Australia
Project Officer	Attention: Director, Research Post Award Telephone: +61 2 8627 8111 Email: marl.kay@sydney.edu.au Fax: +61 2 8627 8145
Individual Project Obligations	
Project Role	The University of Sydney led by Prof. Knox will lead all aspects of the Research Services.
Other project obligations	Nil.
Individual Contributions	
	

Part B: Organisations

Note: All capitalised terms in column 1 of the following tables have the meaning given in column 2.

United Workers Union	United Workers Union , ABN: 52 728 088 684, c/- 19 Argyle St, Parramatta NSW 2150
Project Officer	Attention: Emma Cannen Telephone: 8204 7242 Email: Emma.Cannen@unitedworkers.org.au Fax: u
Individual Project Obligations	
Project Role	ABS Data analysis.
Individual Contributions	
	

Schedule 2 - Research Plan

N.A.

"AK-2"



*Award Flexibility in 'Distressed' Industries impacted by
COVID-19: An Analysis of The Hospitality Industry*

A Report Commissioned by United Workers Union

Angela Knox

Summary

A review of academic research was undertaken in response to the 'Distressed' Industries Award Reviews, specifically in relation to the hospitality industry. The evidence highlights the predominance of 'bad jobs' in Australia's hospitality industry, marked by low pay, limited career progression opportunities, long working hours and lack of job security. Typically, these characteristics contribute to the recruitment and retention problems that blight the industry. Although the onset of COVID-19 lockdowns had a severe impact on employment in the hospitality industry, the subsequent recovery has reignited job vacancies; with labour shortages intensified by COVID-related disruptions to labour supply. Any proposed changes to hospitality awards would need to be assessed in this context. An intensification of 'bad jobs' would compound labour shortages and recruitment and retention problems.

Research evidence indicates that a reduction in penalty rates, including via 'loaded rates', is likely to compound the industry's poor-quality jobs by reducing wages among some of the countries lowest paid workers. There is no evidence to suggest that the costs borne by workers would be offset by increased rates of employment. Rate reductions have also been linked to a reduced willingness to work during non-standard times and increased turnover among hospitality workers. Although simplification of penalty rates has been put forward as a means of solving the industry's compliance problems, existing evidence indicates that simplification has not only failed to improve compliance it has contributed to labour shortages. Additionally, research examining broad-banding highlights the importance of providing workers with additional pay to compensate for resultant increases in task, skill and workload demands, and its effect on progression opportunities.

Further degradation of wages and/or career progression opportunities is likely to heighten recruitment and retention problems and exacerbate labour shortages, proving counterproductive for hospitality businesses. Instead, evidence indicates that efforts should be directed towards increasing the quality of hospitality jobs, including pay and progression opportunities, to increase productivity, stimulate economic growth and spur competitiveness. Nations within the developed world, including the US and UK, are now turning their attention to improving job quality to fuel the job creation that will drive economic recovery from the COVID crisis.

1: Introduction

United Workers Union commissioned this research report in response to the 'Distressed' Industries Award Reviews, specifically in relation to the hospitality industry. The report encompasses five points of reference: the key features of Australia's hospitality industry; the impact of COVID-19 on labour market outcomes; the role and impact of penalty rates and 'loaded rates; the role and impact of broad-banding and job classifications; and the importance of job quality and its capacity to spur economic recovery.

The report is based on a literature review and supplementary statistical sources. The report has seven main sections. Section two provides an overview of the key features of Australia's hospitality industry and employment. Section three focuses on the impact of COVID-19 on labour market outcomes in Australia (aggregate-level) as well as within the hospitality industry (industry-level). Section four focuses on the role and the impact of penalty rates and 'loaded rates', primarily within the hospitality industry. Section five provides an analysis of broad-banding and the role of job classifications within the hospitality industry. Section six sets out the importance of job quality and its role in spurring economic recovery. Section seven provides concluding remarks.

2: The Key Features of Australia's Hospitality Industry

Australian and New Zealand Standard Industrial Classification (ANZSIC) categorises the hospitality industry as encompassing businesses that provide accommodation, food and beverages such as cafes, restaurants and takeaway food services; pubs, taverns and bars; hotels, motels and other accommodation and hospitality clubs. Australia's hospitality industry, otherwise known as the accommodation and food services sector, accounted for 738,231 jobs or 6.9 per cent of Australia's total working population according to the 2016 Census (ABS 2017). In the five-year period preceding November 2020, employment in the industry increased by 0.3 per cent (Australian Government 2020).

With the onset of the COVID-19 pandemic in March 2020, employment in Accommodation declined from 105,500 in 2019 to 75,200 by August 2020. Similarly, Food and beverage services experienced a notable decline in employment from 819,800 to 579,100 between 2019 and 2020 (ABS 2020). While more recent data indicate that an employment recovery is underway, rising vacancy rates suggest that the industry's recruitment and retention problems have also been reignited.

Hospitality is a labour intensive industry that has experienced perennial problems attracting and retaining employees (Goh and Okumus 2020). Prior to COVID-19, the Australian Department of Employment (2014) reported a 28% vacancy rate among hospitality employers, and this problem was expected to produce 123,000 unfilled jobs by 2020 (Deloitte 2015). These labour shortages stem, at least in part, from characteristics of the industry, including a young transient workforce, low levels of pay and high levels of female, student and/or immigrant employment, coupled with casual employment and negative perceptions of the industry (Baum 2006, Deery and Shaw 1999, Richardson 2009, Service Skills Victoria 2005). Illustrating these trends, ABS data from November 2020 indicate the female share of employment in hospitality at around 54 per cent and the full time share of employment approximately 39 per cent, with full time hours averaging around 39 per week (Australian Government 2020). The median age for workers in this industry was 26 years and median weekly earnings around \$500 per week.

Hospitality students in Australia believe that the industry is lagging other industries, particularly in terms of pay, promotion opportunities, career prospects, working hours and job security (Richardson 2009, 2010). Indeed, Richardson's (2010) analysis reveals that the majority of hospitality students were unhappy with pay levels in the industry and almost three-quarters believed that pay levels should be increased, while a similarly large proportion stated that the level of penalty rates should be increased due to the non-standard hours worked. Relatedly, it is estimated that around 29% of hospitality graduates leave the industry within 10 years (Brown et al. 2014). Similar studies have reported 10-20% (Wu et al. 2014) to 32% (Ly and Adler 2009) of graduates intending to leave the industry. More broadly, actual turnover ranges from 48% (King et al. 2003) to 75% (Baum et al. 2020).

On the basis of such findings, Richardson (2009) asserts that Australia's hospitality industry must address its persistent recruitment and retention problems. Other more recent studies within the Australian hospitality industry also highlight the need for these problems to be addressed (Belardi et al. 2020, Knox et al. 2015, Wright et al. 2020). Indeed, recruitment and retention problems are emblematic of the hospitality industry internationally, leading Baum (2019) to argue that high turnover and systemic problems with recruitment must be addressed by employers. Moreover, Goh and Okumus (2020: 2) assert that: 'after more than four decades of hospitality workforce research, the perennial concerns of poor working settings such as low salary, irregular working times, and labour intensity still exist'.

These findings suggest that any proposed changes to hospitality industry awards - General Retail Industry Award 2020; Hospitality Industry (General) Award 2020; Restaurant Industry Award 2020; Registered and Licenced Clubs Award 2010 - should be assessed and considered in light of the industry's persistent and re-emerging vacancy rates and problems with labour recruitment and retention.

3: The Impact of the COVID-19 Pandemic on Labour Market Outcomes

While the onset of the COVID crisis and its effects have been significant, both here and abroad, Australia's economy appears to be bouncing back at aggregate level (Borland 2021). Within Australia's hospitality industry, similar trends are apparent, though slightly more tempered. At the same time however, the pandemic appears to be amplifying the most problematic trends that have plagued the hospitality industry, including issues with recruitment and labour supply (Baum et al. 2020).

In Australia, Borland's (2021) assessment of the economic effects of COVID-19 following the Australian Bureau of Statistics (ABS) release of the Labour Force Survey (LFS) December 2020 and the Weekly Payroll Jobs and Wages (week ending 16 January 2021), provides the most comprehensive and recent analysis of labour market outcomes at aggregate- and industry-level. At aggregate-level, the pandemic produced an initial decrease in real GDP of seven per cent between the March and June quarters, before rebounding by about three per cent in the September quarter. Employment followed a similar pattern. Aggregate monthly hours worked decreased by 10.5 per cent from March to May but rebounded by December, returning to 1.4 per cent below the level in March. LFS data reveal large decreases in employment and hours worked from March to May, followed by rapid recovery from May to June and steady ongoing recovery through to December. A substantial decrease (approx. 8.5%) in the number of jobs occurred from mid-March to mid/late April, followed by strong recovery to early July, restoring the number of jobs to around two to three per cent below mid-March. By early December, the number of jobs had returned to the level of mid-March. Monthly hours worked decreased by 10.4 per cent from March to May and then increased by 3.7 per cent in the month to June. By December, monthly hours worked were back to 1.4 per cent below March (Borland 2021). Data reveal the majority of businesses experienced decreased revenue as a result of the initial onset of the pandemic but revived economic activity has reversed this situation.

At industry-level, data for the Accommodation and food services sector reveal real Gross Value Added (GVA) fell by 38.6 per cent between the March and June quarters before being restored to around 13 per cent below its March-level by the September quarter. Jobs in Accommodation and food services decreased by 35 per cent from mid-March to late April before bouncing back strongly, reaching 10 per cent below mid-March-levels by early December. Accordingly, Borland (2021: 21) notes: '[w]ith the reopening of economic activity, the same industries that were worst affected have recovered most strongly'.

With levels of demand returning and hiring increasing, vacancy rates are now rising in Accommodation and food services (Borland 2021). Internet vacancy data indicate that for a number of key hospitality occupations (cook, chefs, bar attendants/baristas and waiters), job advertisement numbers have not only returned to normal levels but have exceeded the number of advertisements posted in the months leading up to 14 March 2020 (Labour Market Information Portal 2021).

Employers are experiencing increasing difficulties hiring as labour supply has been disrupted by COVID-19. The number of temporary visa holders in categories with highest rates of employment

(international students, working holiday makers and temporary employment (skilled and general)), was 259,000 lower in September 2020 than in the previous year. Subsequently, Borland (2021:31) states that '[t]he effect of this decrease in labour supply on adjustment will be pronounced in sectors where temporary visa holders most commonly work-...primarily in Accommodation and food services'. In addition, COVID-19 has increased health risks associated with face-to-face service work and the insecure, precarious nature of hospitality work has been further exposed, making hospitality jobs even less attractive.

In an analysis of COVID-19's impact on the hospitality workforce internationally, Baum et al. (2020) notes that the situation for hospitality businesses and their workforces, in most countries, is likely to exacerbate the precarious nature of work in the hospitality industry, thereby amplifying pre-existing challenges, including precarious work, low pay and poor working conditions, rather than manifesting new ones. Indeed, Baum notes that the COVID crisis is likely to exacerbate vacancy rates and labour shortages in the hospitality industry as many temporary immigrants have returned to their home countries and travel bans and border closers have substantially reduced the availability of such labour (Baum et al. 2020). According to Clibborn (2018), Australia's international students usually account for a large number of low skilled workers, with the international student program acting as a de facto low skill work policy (Wright and Clibborn 2018). By 2017, Australia's international student enrolments had increased to 792, 422 (Australian Government 2017) and estimates suggest that up to 70% of international students engage in forms of paid work (Marginson et al. 2010), most typically in the hospitality industry (Clibborn 2018). Moreover, Richardson's (2010) findings highlight that domestic students are more inclined to eschew a career in hospitality than international students. Consequently, Baum et al. (2020) argue that the hospitality sector needs to be far more competitive in its approach to the labour market.

In this respect, the industry would be wise to address the prevalence of poor quality jobs. Research focusing on the hospitality industry, both in Australia and overseas, suggests job quality is poor, characterised by low pay, long and inflexible working hours, high work intensity, low autonomy and poor physical conditions (e.g. Baum 2020, Belardi et al. 2020, Burrow et al. 2015, Harris and Giuffre 2015, Knox et al. 2015). Illustratively, Belardi et al. (2020) report that Australian chefs' job quality is poor, characterised by low pay (relative to median earnings in Australia), with limited pay progression, physically demanding work, very long hours and high work intensity. Similarly, Knox et al. (2015) indicate that the job quality of room attendants in large hotels can only be described as poor, involving low pay, intensive, physically demanding work, limited autonomy and few progression opportunities.

Poor job quality among these 'back-of-house' occupations is consistent with findings related to 'front-of-house' occupations, such as waitstaff (e.g. Campbell et al. 2016, Clibborn 2018). According to Timo (1999), Australian hotel workers are low paid (earning below the all industry average), low skilled and typically employed on a casual basis. Beesley and Davidson (2013:272) note that: 'Within Australia...hospitality is no more attractive to prospective employees over other industries (in spite of penalty rates) and... there is no incentive for an employee to remain in the industry'. Indeed, they go on to point out that little has changed since 1997 when Wood described the industry as 'largely exploitative, degrading, poorly paid, unpleasant, insecure and taken as a last resort...' (cited in Beesley and Davidson 2013:270).

Such characterisations have led to recommendations designed to improve the industry and resolve related recruitment and retention issues. Illustratively, Roan and Diamond (2003) suggest that poor job quality in (retail and) hospitality should be addressed in order to attract and retain quality staff. A 'good' job can result in lower rates of turnover and absenteeism and enhance worker health and wellbeing (Clark 2005, Gallie 2013, Siebern-Thomas 2005). In an industry experiencing rising vacancy rates coupled with restricted labour supply resulting from reduced temporary immigrant workers

and less attractive jobs, pressure to enhance the quality of jobs, including pay and career paths, to attract and retain domestic labour is greater than ever.

4: Penalty Rates and ‘Loaded Rates’

While there is not a tremendous volume of academic research examining penalty rates or ‘loaded rates’ in the hospitality industry, the existing literature provides highly consistent findings. Any attempt to reduce penalty rates and/or create ‘loaded rates’ is likely to financially impact those who work on public holidays and Sundays most severely, reducing the wages that they depend on to maintain their standard of living. Employees subsequent need to work longer hours will create additional work-life interference and reduce their time with family and friends. There is no evidence to suggest that the additional costs borne by workers would be offset by increases in employment numbers. Moreover, efforts directed toward easing the administrative burden associated with penalty rates - potentially improving compliance by adopting a form of ‘loaded rates’ - have not proven to be effective. Reducing penalty rates and/or ‘loading rates’ would reduce job quality and intensify recruitment and retention problems, which would be counterproductive for hospitality businesses.

Penalty rates were initially designed to act as a penalty or deterrent to, and compensation for, work performed outside of socially accepted, normal, hours of work (Jones 1981). As noted by Higgins J in 1910: ‘...employers will be more likely to give the required leisure if they are put under a penalty of extra payment’ (cited by Jones 1981:505). Penalty rates are a longstanding feature of the hospitality industry given its extended operating hours, with some sectors (e.g. casinos and hotel accommodation) operating 24 hours a day, seven days a week. Penalty rates also compensate the low wage rates in the hospitality industry, with employees in the hospitality industry among the lowest paid workers in Australia (Bultjens and Cairncross 2009, Peetz et al. 2019).

Two important notions central to decision making regarding penalty rates have been examined by McIvor and Markey (2017). Firstly, they explore the ‘special’ value placed on Sundays as a day for shared time with family. Data from the Australian Work and Life Index (AWALI) reveal that 24% of weekend workers are young (aged 18-24) and single, weekend workers also include couples with and without children and sole parents (Daly 2014). Around 38% of workers who work weekends only and receive penalty rates rely on those rates of pay to meet household expenses and this increases to 49% for those working evenings and weekends and 52% for those working Sundays only (Daly 2014). The attraction of Sunday penalty rates is echoed in research by Peetz et al. (2019), particularly among full time students and casuals reliant on Sunday premiums to sustain their standard of living. Many of these workers, including students and non students, would receive lower pay overall if ‘loaded rates’ were adopted and their access to additional hours to make up for loss of pay would be uncertain and unpredictable, at best.

Evidence also confirms the disutility associated with weekend work, particularly work on Sundays. Research using 2006 ABS time use data by Craig and Brown (2014, 2015) indicates that working on weekends is associated with several hours less time spent with family, including spouse and children, and friends; with 4-5 hours less time spent with children when working on weekend days. Very little of the time lost could be made up on other days. Such findings are consistent with research demonstrating links between weekend work and work-life interference (e.g. Bohle et al. 2004, Skinner and Pocock 2014, Wirtz et al. 2011). Indeed, Skinner and Pocock (2014) report that work-life interference is stronger among those who work Sundays, regardless of whether they work Saturdays. Other evidence indicates that workers value their time on Sundays more than Saturdays. Illustratively, Charlesworth and MacDonald (2015) report that retail workers perceive Sunday, more

than Saturday, as a shared day of rest with others and for family events, in particular. Moreover, in a study conducted by Rose (2015), survey respondents placed a significantly greater wage premium on Sunday work compared to Saturday work, which included a differential reflective of penalty rates in current awards.

Studies also demonstrate that decisions to work non-standard hours are based on the wage premium rather than worker preferences, both in Australia and overseas (Baker et al. 2003, Kostiuik 1990, Lanfranchi et al. 2002). However, having sufficient control to make such a decision is not always available to workers. Research by Peetz et al. (2019:662) deftly highlights that: 'if the employer can essentially require that the employee works on Sundays, there is not choice at all and Sundays will be worked as demanded by the employer, regardless of the work-life disutility'. Moreover, this situation can be compounded if workers are underemployed and/or low paid.

Secondly, McIvor and Markey (2017) analyse the assumption that a reduction in penalty rates would result in increased employment. Findings based on 'natural experiments' in retail and restaurants reveal that changes in penalty rates fail to impact employment, including a reduction in Sunday penalty rates in the restaurant sector, leading McIvor and Markey (2017: 665) to argue that 'reducing penalty rates is unlikely to generate increased employment, and may only serve to shift revenues from lower-paid workers towards profits'. Similarly, based on analysis of employment and hours in retail and hospitality in the month prior to, and following, the FWCs (review of Modern Awards) penalty rate decrease on 1st July 2017, O'Brien et al. (2018:284) were 'unable to establish any statistical evidence of an improvement to Award employees' propensity for working Sundays, nor increasing Sunday or weekly hours', in either industry. The authors conclude that 'our findings do not support any of the potential beneficial employment and hours effects provided by the FWC as rationale for their penalty rate decision' (O'Brien et al. 2018:284).

In a similar study examining the impact of public holiday penalty rate reductions in retail and hospitality before and after 1st July 2017, O'Brien and Markey (2020) failed to establish any evidence for positive public holiday employment outcomes resulting from penalty rate reductions. In attempting to explain the potential reasons for this outcome, the authors highlight the 'inadequate and flawed evidence presented in the penalty rate determination case, confounding factors associated with the adjacent minimum wage rate determination and weak income growth affecting consumer confidence and demand in Retail and Hospitality sectors' (O'Brien and Markey 2020:559). To this extent, weak income growth and low consumer confidence have only been exacerbated by the effects of COVID-19.

Concomitantly, Yu (2015) analysed ABS and HILDA data to examine the effects of an increase in Sunday penalty rates in the NSW retail industry (compared to Victoria, where no penalty rate increase occurred) from 2010 to 2014 and reported no evidence of a systematic effect from the increase in penalty rates. In a separate study examining the effect of increasing Sunday penalty rates on retail industry employment in Australia, Yu and Peetz (2019) report that while the number of employed retail workers was unaffected, a negative effect on hours per worker was more likely, such that the same number of employees worked fewer hours as Sunday premiums rose. These findings suggest that a reduction in penalty rates is most likely to result in virtually the same number of employees working longer hours for lower overall earnings (Yu and Peetz 2019). Subsequently, Yu and Peetz (2019:57) argue that: '[a] cut in Sunday wage premiums would primarily constitute a transfer of income from employees to business owners, with no offsetting increase in the number of employees'. Moreover, if low-paid workers (in hospitality and retail) are required to work longer hours at unsociable times to maintain aggregate rates of pay, they are not better off overall.

Based on the February 2017 decision to reduce penalty rates, Peetz et al. (2019) calculate that affected employees working on Sunday in the hospitality industry would experience losses of \$25 to

\$31 per day (based on 5.5 hours work) or annual earning losses of around \$750 to \$1600 for low classification employees and \$900 to \$1600 for high-classification employees. On public holidays, losses would involve around \$25 to \$33 per day (based on 5.5 hours of work). Moreover, Peetz et al. (2019:677) argue that '[a]ny future move to 'loaded rates' would increase the variability of the losses, such that the greatest losses (above those previously discussed) would be experienced by people working public holidays... and then by people working Sundays'.

Pre-COVID estimates suggest that the number of award-reliant non-managerial Sunday workers receiving penalty rates (not including those experiencing non-compliance) was around 81,800 in hospitality, with a further 152,200 hospitality employees, covered by collective and individual agreements, indirectly affected via the Better Off Overall Test (Peetz et al. 2019). Peetz et al. suggest that lower wages may lead some workers to cease working on Sundays. Moreover, Knox's (2001) analysis of the introduction of 'loaded rates', based on annualised salaries in hotels covered by enterprise bargaining agreements, revealed increased rates of turnover among some staff.

For those working in the hospitality industry, who are the lowest paid in the country, reduced earnings increase the inequality of the distribution of individual earnings, on an hourly and weekly basis and for full time workers and all workers (Peetz et al. 2019). Thus, reductions in penalty rates would widen both the inequality of individual earnings and the inequality of household earnings. Moreover, penalty rate reductions in the hospitality industry will widen the overall gender pay gap as women make up the majority of employees working on Sunday in the hospitality industry (Peetz et al. 2019).

Workers pay is also affected by poor compliance in the hospitality industry. Australian research by Peetz et al. (2019) estimates that around 15% of penalty rates (associated with the Fair Work Commission's decision on penalty rates in retail and hospitality industries in February 2017) for retail workers went unpaid and approximately 32% of penalty rates in accommodation and food services work (encompassing greater scope for exploitation of migrant workers) went unpaid. Poor compliance has also been reported in relation to international students, frequently working in Australia's hospitality industry (Campbell et al. 2016, Clibborn 2018, Reilly et al. 2017). In a study involving almost 1500 international students working in Australia, Clibborn (2018) reveals that sixty per cent of international students were paid less than the National Minimum Wage of \$17.29 per hour and 35% were paid \$12 per hour or less. Among these students, 45% worked in hospitality and 25% worked in retail. Relatedly, Bernhardt et al. (2013) identify non-compliance with minimum employment standards as a strategy at the bottom end of the labour market.

The simplification of penalty rates has been offered as a potential solution to the industry's poor compliance. However, recent research by Belardi et al. (2020) examining chefs in Australian restaurants highlights that annualised salaries, designed to simplify penalty rates, failed to improve compliance. Rather, 'simplification' produced additional compliance problems, which contributed to labour supply issues. Typically, inadequate reconciliation of chefs' award-based annualised salaries with their actual hours of work resulted in unpaid working time. For example, one chef who reported an annualised salary of approximately \$47,000 would have been entitled to approximately \$70,000 if paid according to hourly rates, based on his reported working hours and the applicable penalty rates. Poor implementation and regulation of annualised salaries promoted long working hours among chefs, with employers scheduling as many hours as they desired (without requisite penalty rates), despite the requirement to reconcile hours with hourly rates of pay provided in the award. While less experienced/younger chefs seem more willing to tolerate long working hours and underpayment, more experienced/older chefs are not. These findings are likely to account for the low proportion of older chefs in the industry (DESE 2019), which contribute to systemic skill supply challenges in the hospitality industry (DAE 2011).

Overall, penalty rates serve to compensate for work during unsocial hours that employees would otherwise prefer not to do. Reducing rates does not increase levels of employment. Rather, it results in reduced job quality as proxied by pay, particularly for women, and reduced labour availability for those unsocial hours. Efforts to improve compliance via the simplification of penalty rates have not only proven ineffective but have contributed to skill shortages. Any reduction in or simplification of penalty rates would therefore be counterproductive for businesses.

5: Broad-banding and Job Classifications

Typically, broad-banding involves altering existing job classifications to include a greater range of required tasks to be performed (Curtain and Matthews 1990). This approach is generally used to overcome job demarcations and restrictive work practices, while fostering multiskilling and improving economic performance and productivity (Green and MacDonald 1991). The level of broad-banding and flexibility that already exists within hospitality industry awards has been highlighted since the 1990s. As noted by the Productivity Commission (1996:290), 'The two Federal tourism awards are free of many of the problems found elsewhere. Most workplaces are covered by a single union and a single award: the awards contain explicit provisions for work across broad-banded job classifications, thus generating little inefficiency from demarcation disputes; they provide a reasonable degree of flexibility including opportunities to tailor aspects of the Award to the circumstances of the workplace'. Moreover, the subsequent introduction of minimum award allowable matters in 1996 and 2005 made awards even more attractive to hospitality employers (Buultjens and Cairncross 2009).

Notably, broad-banding leads to work intensification. Research examining the implementation of broad-banding and multiskilling in hotels, following award simplification in 1996, reveals the additional tasks undertaken by workers and the additional skills and knowledge required to perform their jobs. Such research highlights the importance of providing workers with additional pay to compensate for the resulting expansion of tasks (vertically and horizontally) and skills, increased workloads and intensification of work (Knox 2001). Pay increases are offset by the associated increases in workload that enable management to employ fewer staff and accrue savings through reduced labour costs as well as reduced recruitment and training costs.

Another important consideration involves the career structure and career opportunities created by job classifications. Broad-banding tends to flatten career paths and block-off progression opportunities. Given the considerable body of research that points to the need for clear career paths and progression opportunities in the hospitality industry (e.g. McCrindle and Hooper 2006, Roan and Diamond 2003, Whitelaw et al. 2009), to increase recruitment and retention, broad-banding could prove to be counterproductive, particularly if there is no financial compensation provided.

Progression opportunities are especially important to younger workers. Research in the hospitality industry highlights that younger workers, in particular, expect to be able to move up the career ladder quickly (Barron et al. 2007, Goh and Okumus 2020), and they are more likely to quit if they are not promoted within six months (Smith et al. 2018). Illustratively, Reilly (2018) reports that if hospitality employees are unable to visualise their career pathway within an organisation they are more likely to quit. Research conducted in Australian restaurants illustrates that chefs expect promotional opportunities, and pay progression, and the absence of such opportunities heightens turnover (Belardi et al. 2020).

Unfortunately, hospitality is often associated with temporary occupations rather than offering well-defined career pathways (Tung et al. 2018). Illustratively, Richardson's (2010) study of hospitality

students in Australia indicated that almost half stated that they could not see a clear career path in the industry. Subsequently, research by Goh and Okumus (2020) highlights the need for Australian hospitality employers to provide well-defined career pathways in order to attract (and retain) younger workers, in particular. Given that Generation Z (born between 1995 and 2009) will make up over 20% of total jobs within the next four years (Deloitte 2017), the development of well-defined career structures and pathways in the hospitality industry is more important than ever. Blocking-off career paths would make the industry (even more) unattractive.

6: Job Quality and its Role in Spurring Economic Recovery

Job quality not only helps businesses to address recruitment and retention problems, but the evidence indicates that it can improve overall business performance. Increasingly, research highlights the importance of job quality as a means of generating economic growth and spurring competitiveness. Aspects of job quality also correlate with higher levels of productivity and innovation, making them a critical consideration in policy making about employment and economic recovery in the context of the COVID-19 crisis. Job quality refers to a set of dimensions reflecting job characteristics that are conducive to worker wellbeing (Green 2006, OECD 2013). While job quality dimensions can vary between studies, the UK's Measuring Job Quality Working Group (MJQWG) (2018), initiated by the UK Government to develop commonality in job quality dimensions and their measurement, defines seven dimensions: terms of employment; pay and benefits; health, safety and wellbeing; job design and nature of work; social support and cohesion; voice and representation; and work-life balance.

International evidence highlights the importance of job quality as a means of fuelling growth and economic recovery following the global financial crisis and more broadly as a means of increasing competitiveness. Research using EU data reports that job quality improvements increased the national employment rates from 60 per cent to 64 per cent and decreased the unemployment rate from 10 per cent to 6 per cent over a 10-year period (Siebern-Thomas 2005). In contrast, a greater prevalence of low-quality jobs was evident among countries that fared worst before, during and after the global financial crisis, including Italy, Greece and Spain (Clark 2005, Holman 2013).

More broadly, the OECD asserts that quality jobs are an important driver of increased labour force participation, productivity and economic performance. According to OECD Secretary General, Angel Gurría: 'Job quality is not only important to workers' well-being, but also to the overall productivity of a firm. This is now understood at the highest political levels'. Importantly, Davoine et al. (2008) demonstrate that job quality is not generated at the expense of job quantity. Research in Scandinavia reveals that both job creation and job quality can be pursued simultaneously, producing high employment and high levels of job quality (cited by WIER 2020).

Thus, the importance of job quality is now recognised and it is being pursued in various countries, including as a means of recovering from the COVID crisis. A key plank of new US President Joe Biden's "American rescue plan" to lift his nation's economy out of the coronavirus recession rests on more than doubling the minimum wage, for example (Workplace Express 2021). The need to develop 'good work' through improvements to job quality has been adopted in the UK, for example, stemming from the UK Government's 2017 Taylor Review of Modern Working Practices (Taylor et al. 2017). The UK's aim is to create better working lives, reduce in-work poverty and the negative impact of bad jobs on wellbeing, and improve productivity, both in firms and nationally. Indeed, the Taylor Review called on the UK Government to place equal importance on job quality and quantity.

Interest in job quality is also strongly apparent in Scotland, Wales and Northern Ireland. Scotland was the first devolved government to explicitly link job quality with firm performance and individual wellbeing, and integrating job quality into policy. Illustratively, in 2018 First Minister Nicola Sturgeon declared: 'We are committed to Fair Work. More security, decent pay and a greater voice for workers in the companies whose wealth they help create. Fair Work is good for everyone. It drives innovation and productivity. In addition, it makes for better businesses and higher profits (Scottish Government 2018)'. The Scottish Government also expects that its continued commitment to Fair Work will help the nation's economy recover from the COVID-19 crisis (Scottish Government 2020). Recently, Wales also recognised the value of job quality, adopting Fair Work policy to address poor productivity (Wales has the second worst productivity in the UK), in-work poverty and social inequality. Fair Work is intended to 'shock' Welsh employers into making more effective use of its workforces to improve productivity and stimulate innovation (Felstead 2020, Felstead et al. 2020). In Scotland and Wales, Fair Work emphasises job quality (with social partnership) and makes a business case for employers based on organisational gains, including increased productivity and reduced absenteeism. However, Fair Work also offers mutual gains for all- nation, employers and workers (WIER 2020). While job quality policy is less well developed in Northern Ireland, the importance of improving job quality, particularly in three sectors – including accommodation and food, is seen as necessary to increase wellbeing for all by tackling disadvantage and driving economic growth. As such, there is recognition that job creation and job quality are compatible policy aims (WIER 2020).

Research examining the relationship between job quality and productivity highlights a clear, positive link. In the UK, for example, WIER (2020) used Office for National Statistics data on labour productivity (the level of gross domestic product per person or per person hours of labour input, covering 75 sectors) and job quality data from the UK Skills and Employment Survey that covers all seven dimensions of job quality, representing Good Work (as defined by the UK Measuring Job Quality Working Group), to varying extents. Initial analysis revealed that, across sectors, job quality and productivity are positively correlated. Five of the seven dimensions of job quality are positively associated with productivity: Pay and benefits; Job design and nature of work (including progression opportunities); Social support and cohesion; Voice and representation; and Work-life balance. Thus, higher job quality is linked to higher productivity. Among those dimensions that are positive and significant, the results suggest that there is 8% higher productivity in those workers most satisfied with pay compared to those least satisfied. The same outcome is evident for Job design and Social support, and there is 14% higher productivity for the best Voice and representation than in the poorest (Bosworth and Warhurst 2020).

More specifically, research examining the relationship between job quality (using the Good Work dimensions) and productivity (Gross Value Added) in the UK wholesale, hotel and restaurant sector illustrates the importance of Pay and benefits and Job design, including progression opportunities. An increase in Pay and benefits is associated with a significant increase in productivity in the wholesale, hotel and restaurant sector. Equally, an increase in Job design, which includes progression opportunities, is associated with a significant increase in productivity in this sector (Warhurst et al. 2021).

Moreover, analysis indicates that innovation links to productivity, which can create jobs. OECD (2010) data show that employment in less productive firms tends to decline whereas additional jobs are created in more productive firms. Similarly, innovative firms in more innovative countries have greater employment growth and their jobs tend to be of higher quality (de Kok et al. 2011). WIER (2020) has also demonstrated a positive link between job quality and innovation. Other research involving statistical analysis at worker level across 15 EU countries demonstrates a positive relationship between innovation and job quality. In particular, technological innovations are associated with higher job quality (Munoz de Bustillo et al. 2016). Relatedly, Gallie (2018) found that workers with higher quality jobs (involving training and learning opportunities, task discretion and

job security) were much more likely to be involved in innovation. In some firms a 'virtuous circle' exists, such that mutually reinforcing relationships between innovation and job quality are evident (WIER 2020). Such research leads Mathieu et al. (2018) to recommend that governments seek to boost innovation by encouraging firms to improve job quality rather than relying on science and technology.

Perhaps most critically, research in the US has empirically contradicted the idea that policy-making involves a trade-off between job creation and job quality, exposing it as a myth (Osterman 2012), and longitudinal data analysis in the EU reinforces these findings (Erhel and Guergoat-Lariviere 2010). Indeed, the European Commission now acknowledges that the relationship between employment rates and job quality is significant and positive (2012). Job quality can help job creation.

7: Conclusion

The hospitality industry has long been characterised by its young mobile workforce and poor quality jobs entailing low pay, limited career progression opportunities, long working hours and lack of job security. Such characteristics underpin the industry's systemic problems with recruitment and retention, and precipitate labour shortages. Following the onset of the COVID-19 pandemic, employment in hospitality suffered significant declines. However, the subsequent rebound in demand and employment has reproduced vacancy rates and labour shortages. In the current context, labour shortages have been compounded by reduced labour supply and (even) less attractive jobs.

A reduction in penalty rates, including via 'loaded rates', is likely to further reduce job quality, both financially and temporally, and there is no evidence to suggest that the costs borne by workers would be offset by increased rates of employment. Rate reductions are also associated with reduced willingness to work during non-standard times and increased turnover among hospitality workers. Existing efforts to improve compliance by simplifying penalty rates have proven ineffective and exacerbated labour shortages. Any consideration of broad-banding would need to include increased pay to compensate for resultant increases in task, skill and workload demands, and its impact on careers and progression.

Low wages and a lack of career paths precipitate recruitment and retention problems that plague the hospitality industry and further deterioration would exacerbate such problems and prove counterproductive for hospitality businesses. Rather than maintaining or further degrading the industry's 'bad jobs', efforts should be directed towards increasing the quality of hospitality jobs. A strong and expanding evidence-base indicates that increasing job quality, including pay and progression opportunities, in the industry would increase productivity, stimulate economic growth and spur competitiveness. Key nations within the developed world, including the US and UK, are now turning to job quality to fuel the job creation that will drive economic recovery from the COVID crisis.

References

- Australian Bureau of Statistics (ABS) (2020) Employed persons by Occupation unit group of main job (ANZSCO), Sex, State and Territory, August 1986 onwards, 6291.0.55.003
<https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6291.0.55.003May%202020?OpenDocument>
- ABS (2017) 2016 Census – employment, income and unpaid work.
- Australia Department of Employment (2014) Industry Outlook: Accommodation and Food Services. <https://cica.org.au/wp-content/uploads/2014-Accommodation-and-Food-Services-Industry-Outlook.pdf>.
- Australian Government (2017) Research Snapshot: Export income to Australia from international education activity in 2016–17. Department of Education and Training, December. <https://internationaleducation.gov.au/research/Research-Snapshots/Documents/Export%20Income%20FY2016-17.pdf>
- Australian Government (2020) Labour Market Information Portal, [Welcome to the Labour Market Information Portal. \(lmip.gov.au\)](http://www.lmip.gov.au)
- Australia Fairwork (2019) Hospitality Industry General Award 2010 [MA000009]. <https://www.fairwork.gov.au/pay/minimumwages/pay-guides#H>.
- Australia Hotel Association (AHA) (2015) Australian Hotels: Contributing to economic growth and national prosperity. https://issuu.com/australianhotelsassociation/docs/the_publication_2015.16.
- Baker A, Ferguson S and Dawson D (2003) The perceived value of time: Controls versus shiftworkers. *Time and Society* 12(1): 27–39.
- Baum T (2006) *Human Resource Management for Tourism, Hospitality and Leisure: An International Perspective*. London: Thomson Learning.
- Baum T (2019) Hospitality employment 2033: A backcasting perspective invited paper for luminaries special issue of international journal of hospitality management. *International Journal of Hospitality Management*, 76B, 45–52.
- Beesley L and Davidson M (2013) A critical analysis of skilled labor supply and demand in the Australian hospitality industry. *Journal of Quality Assurance in Hospitality & Tourism* 14:264–280.
- Belardi S, Knox A and Wright C (2020) Too hot to handle ? An analysis of chefs’ job quality in Australian restaurants. *Journal of Industrial Relations*, <https://doi.org/10.1177/0022185620940375>
- Bernhardt A, Michael S and Theodore N (2013) Employers gone rogue: Explaining industry variation in violations of workplace laws. *Industrial and Labor Relations Review* 66(4): 808–832.
- Blomme R, Van Rheede A and Tromp D (2009) The hospitality industry: An attractive employer? An exploration of students’ and industry workers’ perceptions of hospitality as a career field. *Journal of Hospitality and Tourism Education* 21(2):6–14.
- Bohle P, Quinlan M, Kennedy D, et al. (2004) Working hours, work-life conflict and health in precarious and ‘permanent’ employment. *Revista de Saude Publica* 38(Suppl.): 19–25.

- Borland J (2021) An assessment of the economic effects of COVID-19- Version 2. Research report prepared for the Fair Work Commission. Australia: Fair Work Commission.
- Bosworth D and Warhurst C (2020) 'Does good work have a positive effect on productivity? Developing the evidence base' in G. Irvine. (ed). [*Can Good Work Solve the Productivity Puzzle? Collected essays*](#), (10-19). Dunfermline: Carnegie UK Trust.
- Brown E, Arendt S and Bosselman R (2014) Hospitality graduates' perceptions of career factor importance and career factor experience. *International Journal of Hospitality Management* 37: 58–67.
- Burrow R, Smith J and Yakinthou C (2015) 'Yes, chef': Life at the vanguard of culinary excellence. *Work, Employment and Society* 29(4): 673–681.
- Buultjens J (2001) The hospitality industry and wage determination: A case study of registered clubs in NSW. *Australian Journal of Hospitality Management* 8 (1):15-26.
- Buultjens J and Cairncross G (2009) The Australian hospitality industry's response to formalised enterprise and individual bargaining prior to the Rudd Government. *Journal of Hospitality and Tourism Management* 16:45– 54.
- Campbell I, Boese M and Tham JC (2016) Inhospitable workplaces? International students and paid work in food services. *Australian Journal of Social Issues* 51(3): 279–298.
- Charlesworth S and MacDonald F (2015) Expert Report to the Shop Distributive and Allied Employees Association in the FWC 4 Yearly Review of Modern of Awards. Melbourne, Australia: Centre for Sustainable Organisations and Work RMIT University.
- Clark A (2005) 'What makes a good job? Evidence from OECD countries' In, Brazen, S, Lucifora, C and Salverda, W, *Job Quality and Employer Behaviour*, New York: Palgrave Macmillan.
- Clibborn S (2018) Multiple frames of reference: Why international student workers in Australia tolerate underpayment. *Economic and Industrial Democracy* DOI: 10.1177/0143831X18765247.
- Craig L and Brown JE (2014) Weekend work and leisure time with family and friends: Who misses out? *Journal of Family and Marriage* 76: 710–727.
- Craig L and Brown JE (2015) Nonstandard employment and nonwork activities time alone and with others: Can weekend workers make up lost time? *Journal of Industrial Relations* 57(1): 3–23.
- Curtain R and Mathews J (1990) Two Models of Award Restructuring in Australia. *Labour and Industry* 3(1):58-75.
- Daly T (2014) Evenings nights and weekends: Working unsocial hours and penalty rates. Report. Adelaide: Centre for Work + Life University of South Australia.
- Davoine L, Erhel C and Guergoat-Lariviere M (2008) Monitoring quality in work: European employment strategy indicators and beyond. *International Labour Review* 147(2-3): 163-198.
- Deery M and Shaw R (1999) An investigation of the relationship between employee turnover and organisational culture. *Journal of Hospitality & Tourism Research* 23 (4): 387–400.

de Kok J, Vroonhof P, Verhoeven W, Timmermans N, Kwaak T and Snidjers J (2011) [*Do SMEs create more and better jobs?*](#), Brussels: EIM.

Deloitte (2015) Australian Tourism Labour Force Report: 2015–2020 for Australian Trade Commission.
https://www.tra.gov.au/ArticleDocuments/185/Australian_Tourism_Labour_Force_FINAL.PDF.aspx?Embed=Y.

Deloitte (2017) The 2017 Deloitte Millennial Survey: Apprehensive stability and opportunities in an uncertain world. <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/about-deloitte/deloitteau-about-millennial-survey-2017-030217.pdf>.

Deloitte Access Economics (DAE) (2011) Australian Tourism Labour Force Report: Labour Force Profile (Part 1). Report for the Labour and Skills Working Group and the Department of Resources, Energy and Tourism. Australia: DAE.

Department of Education, Skills and Employment (DESE) (2019) Job outlook: Chefs.
<http://joboutlook.gov.au/occupation.aspx?search=alpha&tab=stats&cluster=&code=3513>.

Erhel C and Guergoat-Larivière M (2010) 'Job Quality and Labour Market Performance', *Centre for European Policy Studies Working Document Number 3*, 3 June 2010,
<http://ssrn.com/abstract=1622244> or <http://dx.doi.org/10.2139/ssrn.1622244>

European Commission (EC) (2012) New skills and jobs in Europe: Pathways towards full employment. Luxembourg: Publications Office of the European Union.

Felstead A (2020) 'Fair Work, low pay and productivity in Wales' in G. Irvine (Ed.). [*Can Good Work Solve the Productivity Puzzle? Collected Essays*](#), Dunfermline: Carnegie UK Trust.

Felstead A, Gallie D, Green F and Henseke G (2020) Getting the Measure of Employee-Driven Innovation and Its Workplace Correlates. *British Journal of Industrial Relations* DOI:
<https://doi.org/10.1111/bjir.12528>

Gallie D (2013) Direct participation and the quality of work. *Human Relations* 66(4):453-474.

Gallie D (2018) *Quality of work and innovative capacity: Implications for social equality*, [*QuinnE Working Paper No. 8*](#). <http://quinne.eu/>

Goh E and Okumus F (2020) Avoiding the hospitality workforce bubble: Strategies to attract and retain generation Z talent in the hospitality workforce. *Tourism Management Perspectives*,
<https://doi.org/10.1016/j.tmp.2019.100603>

Green F (2006) *Demanding Work*. Princeton, NJ: Princeton University Press.

Green R and MacDonald D (1991) The Australian flexibility paradox. *Journal of Industrial Relations* 35: 142-56.

Harris DA and Giuffre P (2015) *Taking the Heat: Women Chefs and Gender Inequality in the Professional Kitchen*. New Brunswick, NJ: Rutgers University Press. Hay C (2015) *What Do Low-Paid Workers Think Would Improve Their Working Lives?* London: Joseph Rowntree Foundation.

Holman D (2013) Job types and job quality in Europe. *Human Relations* 66(4): 475-496.

Jones S (1981) Penalty rates under challenge. *Journal of Industrial Relations* 23(4): 504-507.

- King B, McKercher B and Waryszak R (2003) A comparative study of hospitality and tourism graduates in Australia and Hong Kong. *International Journal of Tourism Research* 5(6):409–420.
- Knox A (2001) Labour management in transition: Employment regulation, business strategy and labour utilisation in the luxury hotel industry. Ph.D. thesis, University of Melbourne.
- Knox A, Warhurst C and Nickson D (2015) More than a feeling: Using hotel room attendants to improve understanding of job quality. *The International Journal of Human Resource Management* 26(12): 1547–1567.
- Kostiuk PF (1990) Compensating differentials for shift work. *Journal of Political Economy* 98(5): 1054–1075.
- Lanfranchi J, Ohlsson H and Skalli A (2002) Compensating wage differentials and shift work preferences. *Economic Letters* 74(3): 393–398.
- Ly T and Adler H (2009) Career goals and expectations of hospitality and tourism students in China. *Journal of Teaching in Travel and Tourism* 9(1):63–80.
- Marginson S, Nyland C, Sawir E and Forbes-Mewett H (2010) *International Student Security*. Cambridge: Cambridge University Press.
- Mathieu C, Gallie D and Keune M (2018) Final Report for QuInnE. <http://quinne.eu/>
- McCrinkle M and Hooper D (2006) Gen Y: Attracting, engaging and leading a new generation at work. White paper. <http://www.drakeintl.com/au/pdf/0001%20-%20GenerationY.pdf>
- McIvor J and Markey R (2017) Scrutinising the argument for reducing penalty rates. *Journal of Industrial Relations* 59(5): 652-669.
- Muñoz de Bustillo R, Grande R and Fernández-Macías E (2016) Innovation and Job Quality. An Initial Exploration, [QuInne Working Paper No.5](#).
- O’Brien M and Markey R (2020) Labour regulation reform and sectoral employment outcomes: A case study of public holiday penalty rate reductions in Australia. *Applied Economic Letters* 27(7):559-563.
- O’Brien M, Markey R and Pol E (2018) The short run impact of penalty rate cuts in employment outcomes in retail and hospitality sectors in Australia. *Economic Papers* 37(3):270-286.
- OECD (2010) [*Ministerial report on the OECD Innovation Strategy: Innovation to strengthen growth and address global and social challenges: Key findings*](#), Paris: OECD.
- Organisation for Economic Co-operation and Development (OECD) (2013) *How’s Life? 2013: Measuring Well-Being*. Paris: OECD Publishing.
- Osterman P (2012) ‘Job Quality In America: The Myths That Block Action’, in Tilly, C, Carre, F, Warhurst, C and Findlay, P (eds) *Are Bad Jobs Inevitable?* USA: Palgrave.
- Palley T (2011) The economics of wage-led recovery: Analysis and policy recommendations. *International Journal of Labour Research* 3(2): 219–244.

Peetz D, Bruynius S and Murray G (2019) Choice and the impact of changes to Sunday premiums in the Australian retail and hospitality industries. *Journal of Industrial Relations* 61(5):657-681.

Productivity Commission. (1996). *Tourism accommodation and training report*. Canberra, Australia: Author.

Reilly P (2018) Building customer centricity in the hospitality sector; the role of talent management. *Worldwide Hospitality and Tourism Themes* 10 (1): 42-56.

Reilly A, Howe J and Berg L (2017) *International Students and the Fair Work Ombudsman*. Melbourne, VIC: Fair Work Ombudsman.

Richardson S (2009) Undergraduates' perceptions of tourism and hospitality as a career choice. *International Journal of Hospitality Management* 28(3):382-388.

Richardson S (2010) Tourism and hospitality students' perceptions of a career in the industry: A comparison of domestic (Australian) students and international students studying in Australia. *Journal of Hospitality and Tourism Management* 17: 1–11.

Roan A and Diamond C (2003) Starting Out: The Quality of Working Life of Young Workers in the Retail and Hospitality Industries in Australia. *International Journal of Employment Studies* 11(2): 91–119.

Rose J (2015) Value of work time during public holidays. Report for the Australian Business Industrial and New South Wales Business Chamber, Institute for Choice, Sydney.

Schneiders B and Millar R (2019) Rockpool staff records doctored as part of 'most egregious' wage theft. *Sydney Morning Herald*, 24 October.

Service Skills Victoria (2005) *Service Skills Victoria's response to Victoria's tourism and events industry discussion paper*. Melbourne.

Siebern-Thomas F (2005) 'Job quality in European labour markets' In, Brazen, S, Lucifora, C and Salverda, W, *Job Quality and Employer Behaviour*. New York: Palgrave Macmillan.

Skinner N and Pocock B (2014) *The Persistent Challenge: Living, Working and Caring in Australia in 2014*. Adelaide: Centre for Work + Life University of South Australia.

Scottish Government (2018) 'Fair Work First' announced by FM. 9 October.

<https://news.gov.scot/news/fair-work-first-announced-by-fm>

Scottish Government (2020) [*Fair Work Action Plan: Boosting productivity by developing Scotland as a world-leading Fair Work Nation*](#).

Taylor M, Marsh G, Nicol D and Broadbent P (2017) [*Good Work: The Taylor Review of Modern Working Practices*](#). London: HM Government.

Timo N (1999) Contingent and retentive employment in the Australian hotel industry: Reformulating the core-periphery model. *Australian Journal of Labor Economics* 13(1): 47-64.

Tung V, Tang C and King B (2018) Tourism industry career prospects and the business environment: Evidence from Canada and Macau. *International Journal of Tourism Research* 20(4): 518–525.

Valent D (2019) Restaurateurs call for 'amnesty' to deal with wage compliance. Sydney Morning Herald, 3 October.

Warhurst C, Sarkar S and Bosworth D (2021) 'Good Work and Productivity', Working Paper, Institute for Employment Research, University of Warwick, forthcoming.

Warwick Institute for Employment Research (WIER) (2020) Research to inform the development of an employment relations model for Northern Ireland. A report for Labour Relations Agency. UK: WIER.

Whitelaw P, Barron P, Buultjens J, Cairncross G, & Davidson M (2009) Training needs of the hospitality industry. Gold Coast, Australia: STCRC.

Wirtz A, Nachreiner F and Rolfes K (2011) Working on Sundays – Effects on safety, health, and work-life balance. *Chronobiology International* 28(4): 361–370.

Workplace Express (2021) Wage boost at centre of Biden COVID recovery plan, [Wage boost at centre of Biden COVID recovery plan \(workplaceexpress.com.au\)](https://www.workplaceexpress.com.au)

Wright C and Clibborn S (2018) Back door, side door or front door? An emerging de-facto lowskilled immigration policy in Australia. *Comparative Labor Law and Policy Journal* 39(1): 101–126.

Yu S (2015) Evaluating the impact of Sunday penalty rates in the NSW retail industry. Report prepared for the Shop Distributive and Allied Employees Association, University of Sydney.

Yu S and Peetz D (2019) Non-standard time wage premiums and employment effects: Evidence from an Australian Natural Experiment. *British Journal of Industrial Relations* 71(1): 33-61.